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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0160; FV08–916/917–1 FIR]

Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, with a change, an interim final rule changing the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule continues in effect the action that updated the variety-specific size requirements to reflect changes in commercially significant varieties. This will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

DATES: *Effective Date:* August 25, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jen.Garcia@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that modified handling requirements applicable to well matured fruit covered under the nectarine and peach orders. It also continues in effect the action that updated variety-specific size requirements to reflect changes in commercially significant varieties. These changes enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (Inspection Service) and certified as meeting the applicable requirements.

The nectarine order has been in effect since 1939, and the peach program has been in effect since 1958. The orders have been used over the years to establish a quality control program that includes minimum grades, sizes, and maturity standards. That program has helped improve the quality of product moving from the farm to market, and has helped growers and handlers more effectively market their crops. Additionally, the orders have been used to ensure that only satisfactory quality nectarines and peaches reach the consumer. This has helped increase and maintain market demand over the years.

Sections 916.53 and 917.42 authorize the modification, suspension, or termination of regulations issued under §§ 916.52 and 917.41, respectively. Changes in regulations have been implemented to reflect changes in industry operating practices and to solve marketing problems as they arise. The committees meet whenever needed, but at least annually, to discuss the orders and the various regulations in effect and to determine if, or what, changes may be necessary to reflect industry needs. As a result, regulatory changes have been made numerous times over the years to address industry changes and to improve program operations.

Currently, handling requirements are in effect for nectarines and peaches packed in containers marked ''CA WELL MAT'' or ''California Well Matured.'' The term ''well matured'' is defined in the orders' rules and regulations, and has been used for many years by the

industry to describe a level of maturity higher than the definition of ''mature'' in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223). Other handling requirements were suspended in 2007 to reduce handler inspection costs.

The committees met on December 18, 2007, and unanimously recommended that the handling requirements be revised for the 2008 season, which began in April. The committees announced a crop estimate of 21,000,000 containers of nectarines and 23,500,000 containers of peaches at their April 29, 2008, meetings.

Both orders provide authority (in §§ 916.52 and 917.41) to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both the size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, thereby increasing returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which is also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The committees conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the action that revised paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for 11 varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2007 season. This rule also continues in effect the action that removed the variety-specific minimum size requirements for four varieties of nectarines whose shipments fell below 5,000 containers during the 2007 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnecteleven (Summer Flare® 30) variety of nectarines, recommended for regulation at a minimum size 84. A minimum size of 84 means that a packed standard lug box will contain not more than 84 nectarines. Studies of the size ranges attained by the Burnecteleven (Summer Flare® 30) variety revealed that 100 percent of the containers met the minimum size of 84 during the 2006 and 2007 seasons. Sizes ranged from size 30 to size 70, with 9.6 percent of the fruit in the 30 sizes, 50 percent of the packages in the 40 sizes, 32.9 percent in the 50 sizes, 6.2 percent in the 60 sizes, and 1.3 percent in the 70 sizes.

A review of other varieties with the same harvesting period indicated that the Burnecteleven (Summer Flare® 30) variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Burnecteleven (Summer Flare® 30) variety in the variety-specific minimum size regulation at a minimum size 84 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both committee and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(3) of § 916.356 was revised to include the Polar Ice and Polar Light nectarine varieties; paragraph (a)(4) of § 916.356 was revised to include the Burnectthirteen (Snow Flare® 22), Burnectfourteen (Snow Flare® 21), and White Sun nectarine varieties; and paragraph (a)(6) of § 916.356 was revised to include the Burnecteleven (Summer Flare® 30), Burnectfifteen (Summer Flare® 27), Grand Bright, La Reina, Saucer, and Sugar Pearl™ nectarine varieties.

This rule also continues in effect the action that revised paragraph (a)(6) of § 916.356 to remove the August Snow, Prima Diamond XVIII, Sparkling Red, and Summer Grand nectarine varieties from the variety-specific minimum size requirements because fewer than 5,000 containers of each of these varieties were produced during the 2007 season. Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the action that revised paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of § 917.459 to establish variety-specific minimum size requirements for 15 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2007 season. This rule also continues in effect the action that removed the variety-specific minimum size requirements for eight varieties of peaches whose shipments fell below 5,000 containers during the 2007 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Super Lady variety of peaches, which was recommended for regulation at a minimum size 96. A minimum size of 96 means that a packed standard lug box contains not more than 96 peaches. Studies of the size ranges attained by the Super Lady variety revealed that 98.9 percent of the containers met the minimum size of 96 during the 2006 and 2007 seasons. The sizes ranged from size 40 to size 96, with 6.9 percent of the containers meeting the size 40, 4 percent meeting the size 50, 20.5 percent meeting the size 60, 29.8 percent meeting the size 70, 15.6 percent meeting the size 80, 4.5 percent meeting the size 84, 4.9 percent meeting the size 88, and 12.7 percent meeting the size 96 in the 2007 season.

A review of other varieties with the same harvesting period indicated that the Super Lady variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the Super Lady variety in the variety-specific minimum size regulation at a minimum size 96 is appropriate.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when

such size recommendations are deliberated. Producer and handler comments are also considered at committee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(2) of § 917.459 was revised to include the Supechfifteen and Super Lady peach varieties; paragraph (a)(5) of § 917.459 was revised to include the Crimson Queen, Sauzee Queen, and Supechnine peach varieties; and paragraph (a)(6) of § 917.459 was revised to include the Burpeachtwentyone (Summer Flame® 26), Candy Princess, Jasper Flame, Natures #10, Peach–N–Cream, Queen Jewel, September Blaze, Strawberry, Summer Fling, and Sweet Henry peach varieties.

This rule also continues in effect the action that revised paragraph (a)(2) of § 917.459 to remove the Sugar Snow peach variety; paragraph (a)(3) of § 917.459 to remove the May Snow peach variety; paragraph (a)(5) of § 917.459 to remove the Raspberry, Sugar Jewel, and Sunlit Snow peach varieties; and paragraph (a)(6) of § 917.459 to remove the Late Ito Red, Magenta Gold, and Scarlet Snow peach varieties from the variety-specific minimum size requirements because less than 5,000 containers of each of these varieties was produced during the 2007 season. Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The committees recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions. This should help establish and maintain orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Industry Information

There are approximately 145 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 550 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000. Small agricultural producers are defined by the SBA as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 30 handlers in the industry who would not be considered small entities. For the 2007 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of $6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2007 season, the committees' staff estimates that small handlers represent approximately 80 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 65 producers in the industry would not be considered small entities. For the 2007 season, the committees estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2007 season, the committees' staff estimates that small producers represent more than 88 percent of the producers within the industry.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 42,382,098 containers, the value of the 2007 packout is estimated to be $190,719,441. Dividing this total estimated grower revenue figure by the estimated number of producers (550) yields an estimate of average revenue per producer of about $346,763 from the sales of peaches and nectarines.

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis.

Sections 916.356 and 917.459 of the orders' rules and regulations establish minimum sizes for various varieties of nectarines and peaches. This rule continues in effect the action that made adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2008 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the committees based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby

increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the December 18, 2007, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the committees. The committees' Tree Fruit Quality Subcommittee met on December 11, 2007, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on March 18, 2008. Copies of the rule were posted on the committees' Web site. In addition, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. That rule provided a 60-day comment period which ended May 19, 2008. One comment was received from the committees' staff. The comment stated that the trademark name for the currently regulated Burpeachsixteen variety had been established as ''Spring Flame® 24.'' Section 917.459(a)(6) has been modified to include the new trademark name.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is found that finalizing this interim final rule, with a change, as published in the **Federal Register** (73 FR 14372, March 18, 2008) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 73 FR 14372 on March 18, 2008, is adopted as a final rule with the following change:

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 917.459 is amended by revising the introductory text of paragraph (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

* * * * *

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Burpeachfifteen (Summer Flame® 34), Burpeachsixteen (Spring Flame® 24), Burpeachtwenty (Summer Flame®), Burpeachtwentyone (Summer Flame® 26), Candy Princess, Coral Princess, Country Sweet, Diamond Princess, Earlirich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Flame, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Natures #10, O'Henry, Peach-N-Cream, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Queen Jewel, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), September Blaze, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Magic, Snow Princess, Sprague Last Chance, Spring Candy, Strawberry, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Fling, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Henry, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

* * * * *

Dated: July 21, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–16956 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. AMS–FV–08–0044; FV08–981–1 IFR]

Almonds Grown in California; Relaxation of Incoming Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the incoming quality control requirements prescribed under the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule changes the date by which almond handlers must satisfy their inedible disposition obligation from August 31 to September 30 of each year. This will provide handlers more flexibility in their operations in light of larger almond crops.

DATES: Effective July 25, 2008; comments received by September 22, 2008 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Terry.Vawter@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule relaxes the incoming quality control requirements prescribed under the order. This rule changes the date by which almond handlers must satisfy their inedible disposition obligation from August 31 to September 30 of each year. This will provide handlers more flexibility in their operations in light of larger almond crops.

Section 981.42 of the order provides authority for a quality control program. Paragraph (a) of this section requires handlers to obtain incoming inspections on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. Inedible kernels are poor quality kernels or pieces of kernels as defined in § 981.408. A handler's inedible disposition obligation is based on the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State inspection service. Handlers must satisfy their obligation by disposing of inedible kernels and other almond material in Board-accepted, non-human consumption outlets like oil and animal feed. Section 981.42(a) also provides authority for the Board, with approval of the Secretary, to establish rules and regulations necessary to administer this program.

Section 981.442(a)(5) of the order's administrative rules and regulations currently specifies that handlers must satisfy their inedible disposition obligation no later than August 31 succeeding the crop year in which the obligation was incurred. The crop year runs from August 1 through July 31.

Since the mid-1990s, almond crops have doubled in size and are now over 1 billion pounds annually. Larger crops have resulted in larger quantities of inedible kernels. Between the 1993–94 and 1997–98 crop years, almond production averaged about 570 million pounds and inedible disposition obligations averaged about 7 million pounds annually. Between the 2003–04 and 2007–08 crop years, production averaged about 1 billion pounds and inedible disposition obligations averaged about 10 million pounds annually.

Many handlers now operate year-round and dispose of their inedible kernels at one time after the end of the crop year. With larger crops, it has become difficult for handlers to meet the August 31 inedible-disposition deadline because of the larger volume of inedible kernels that must be disposed of under the program. Thus, the Board recommended extending the deadline from August 31 to September 30, giving handlers an additional month to meet their prior year's obligation. This will provide handlers more flexibility in their operations in light of larger almond crops. Section 981.442(a)(5) is revised accordingly.

This rule also removes obsolete language in § 981.442(a)(5). That section was modified in 2006 to specify that at least 50 percent (increased from 25 percent) of a handler's crop year inedible disposition obligation must be satisfied with dispositions consisting of inedible kernels. The 50 percent requirement does not apply to handlers with total inedible obligations of less than 1,000 pounds. However, that section still contains the sentence referencing the 25 percent requirement. This rule removes that sentence and revises § 981.442(a)(5) accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 6,200 producers of almonds in the production area and approximately 100 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Data for the most recently-completed crop year indicate that about 50 percent of the handlers shipped under $6,500,000 worth of almonds. Dividing average almond crop value for 2006–07 reported by the National Agricultural Statistics Service of $2.258 billion by the number of producers (6,200) yields an average annual producer revenue estimate of about $364,190. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities.

This rule revises and relaxes § 981.442(a)(5) of the order's administrative rules and regulations, whereby handlers will be permitted to satisfy their inedible disposition obligation no later than September 30 of each year for obligations incurred in the previous crop year, rather than the current deadline of August 31 of each year. This rule also removes an obsolete sentence in that section that references handler dispositions containing 25 percent inedible kernels. Authority for this action is provided in § 981.42(a) of the order.

Regarding the impact of this action on affected entities, extending the disposition deadline will provide handlers with additional flexibility in light of larger almond crops. Handlers who operate year round and dispose of their inedible kernels at one time after the end of the crop year will have an additional month to satisfy their prior year's inedible obligation.

The Board considered alternatives to this action. The Board's Food Quality and Safety Committee (committee) met in September and November 2007 and discussed the difficulties that handlers were experiencing with meeting the August 31 disposition deadline. The committee recommended revising the regulation to allow July dispositions to be counted towards either the current year or the following year's obligation. However, the intent of the inedible program is to ensure that poor quality almonds from the current crop year are removed from the market. Thus, allowing July dispositions to count towards the following year's obligation would not meet the intent of the program.

The committee deliberated on this issue again in April 2008. The committee considered the option of extending the August 31 deadline to September 30. The Board concurred with this option at its meeting on April 2, 2008, and referred the issue back to the committee for full discussion. The committee met again on April 22, 2008, to discuss the potential change. Ultimately, the committee recommended this option to the Board, and the Board unanimously recommended this change at its May 2008 meeting.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee and Board meetings where this issue was discussed were widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations. Like all committee and Board meetings, the meetings held in September and November 2007, and in April and May 2008 were all public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on relaxing the quality control requirements currently prescribed under the California almond marketing order. This rule extends the date by which handlers must satisfy their inedible disposition obligation from August 31 to September 30 of each year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be in place as soon as possible so that handlers can act accordingly; (2) the Board unanimously recommended this change at a public meeting, and interested parties had an opportunity to provide input; (3) this rule relaxes the current rules and regulations; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 981.442, paragraph (a)(5) the words ''At least 25 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided*, That this 25 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds.'' are removed and the last sentence is revised to read as follows:

§ 981.442 Quality control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than September 30 succeeding the crop year in which the obligation was incurred.

* * * * *

Dated: July 22, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1465 Filed 7–22–08; 12:26 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 65, 67, and 183

[Docket No.: FAA–2007–27812; Amdt. Nos. 61–121, 65–52, 67–20, and 183–13]

RIN 2120–AI91

Modification of Certain Medical Standards and Procedures and Duration of Certain Medical Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule extends the duration of first- and third-class medical certificates for certain individuals. A first-class medical certificate is required when exercising airline transport pilot privileges and at least a third-class medical certificate when exercising private pilot privileges. Certain conforming amendments to medical certification procedures and some general editorial amendments are also adopted. The intent of this action is to improve the efficiency of the medical certification program and service provided to medical certificate applicants.

DATES: These amendments become effective August 25, 2008 except for the amendments to § 61.23(d) which become effective on July 24, 2008.

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum, Office of the Federal Air Surgeon, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9689; e-mail; *Judi.M.Citrenbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Chapter 447, Sections 44701, 44702 and 44703. Under Section 44701 the Administrator has the authority to prescribe regulations and minimum standards for practices, methods and procedures necessary for safety in air commerce and national security. Under Section 44702 the Administrator has the authority to issue certificates. More specifically, under Section 44703(b)(C) the Administrator has the authority to decide terms necessary to ensure safety in air commerce, including terms on the duration of certificates and tests of physical fitness. This rule extends the duration of first- and third-class medical certificates for certain individuals in order to improve the efficiency of the medical certification program and service provided to medical certificate applicants, without compromising the safety of air commerce. For this reason, the proposed change is within the scope of our authority and is a reasonable and necessary exercise of our statutory obligations.

Background

Summary of the Notice of Proposed Rulemaking

Currently, the maximum duration on a first-class medical certificate is 6 months regardless of age and, on a third-class medical certificate, 36 months for individuals under age 40. On April 10, 2007 [72 FR 18092], the FAA proposed to amend § 61.23(d) to extend the duration of first- and third-class medical certificates for individuals under the age of 40. First-class medical certificates for individuals under age 40 would be extended from 6 months to 1 year and third-class medical certificates for individuals under the age of 40 would be extended from 3 years to 5 years.

The FAA developed this proposal through review of relevant medical literature, its own aeromedical certification data, and accident data. Additionally, the FAA considered the long-standing International Civil Aviation Organization (ICAO) standards requiring annual medical certification for airline transport and commercial pilots in multi-crew settings and also the ICAO standards adopted in November 2005 extending medical duration for private pilots from 2 years to 5 years under the age of 40. These ages and examination periods were selected based on current ICAO standards, in effect since 2005, which have not had an adverse impact on safety, and based on trends with younger applicants indicating no significant increase in undetected pathology between required examinations. Those individuals manifesting conditions that represent a risk to safety will continue to be denied certification or, after individual evaluation, will continue to be restricted in their flying activities, or examined more thoroughly and frequently, or both. Further, this rule will continue, and not affect, the long-standing regulatory prohibition in § 61.53 against exercising privileges during periods of medical deficiency.

In addition to extending the duration of first- and third-class medical certificates, the FAA also proposed the following minor, mostly editorial, changes:

Add New Section § 67.4

- To provide more specific direction to applicants applying for a medical certificate, including how to locate an Aviation Medical Examiner (AME).
- To codify that applicants must fill out a form to apply for a medical certificate and thereby conform part 67 with existing language under § 61.13 that requires pilot certificate applicants to make application ''on a form and in a manner acceptable to the Administrator.''
- To codify that applicants must present proof of age and identity for airman medical certification.

Amend § 183.15

- To remove a specific time limit for the duration of the designation of AMEs. The FAA had done this previously under rulemaking effective in November 2005 but it was made applicable only for designees of the Flight Standards and Aircraft Certification Services. This action will make a consistent standard for all FAA designees, including AMEs, by having duration set at the discretion of the FAA.

Edit §§ 61.29, 65.16, 67.3, 67.401, 67.405, 67.411, 67.413, and 183.11

- *§§ 61.29 and 65.16:* To provide a new P.O. Box for applicants to use when they need a replacement medical certificate or when they need to change their name on a medical certificate. While the current P.O. Box listing is valid, the FAA finds that requests sent to this alternate P.O. Box are received more expeditiously thus allowing the FAA to provide better service to applicants. In the proposal the FAA inadvertently amended § 65.16(b) with the new P.O. Box when we intended to amend § 65.16(c). The final rule correctly amends § 65.16(c).
- *§ 67.405:* To move certain provisions of this paragraph under new § 67.4.
- *§ 67.411:* To delete this section that addresses military flight surgeons on a specific military base being designated as AMEs. Because the FAA has ceased designating AMEs at particular military installations in favor of designating individual military personnel as AMEs (just as it does civilian AMEs) the

distinction made in this provision is no longer needed.

• *§ 67.413:* To re-format this section to make it easier to read and understand.

• *§ 183.11:* To make an editorial change (revising ''his'' to ''his or her'') to be consistent with a conforming amendment in § 67.407(d) that says ''his or her.''

Summary of Comments

The FAA received 36 comments to the April 10, 2007 proposal. Commenters generally supported the proposed changes. The National Transportation Safety Board (NTSB) commented as did eight aviation associations including the Aerospace Medical Association, the National Air Transport Association, the Air Line Pilots Association International, the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the Civil Aerospace Medical Association (CAMA), the Helicopter Association International, and the National Business Aviation Association. One manufacturer, Cessna Aircraft Company, indicated that it appreciated the opportunity to comment but had no specific comment at this time.

The remaining comments were from individuals. Among these commenters, a few opposed it, including an AME, who indicated that under-age-40 individuals should be examined as frequently as over-age-40 individuals. More commenters indicated, however, that the proposed action is appropriate but should be further amended, for example, to extend the duration of medical certificates for over-age-40 individuals.

Commenters requested specifically that the FAA consider the following for the final rule:

• Extend the duration of medical certificates for individuals over age 40. (4 comments)

• Extend the duration of student pilot certificates to 60 months. (1 comment)

• Extend the duration of second-class medical certificates beyond 12 months. (1 comment)

• Allow a U.S. driver's license as medical qualification in lieu of an FAA medical certificate to exercise recreational pilot privileges. (4 comments)

• Develop policy to address the impact (at the third-class level) of the 3-year limit on the National Driver Registry (NDR) search once the interval between medical applications is extended to 5 years. (2 comments)

• Require pilots to report in a timely fashion to the FAA any medical conditions that may develop between examinations. (2 comments)

• Develop a more efficient method for medical certificate holders to report changes in medical conditions, rather than relying on self-assessment policies during periods of medical deficiency. (2 comments)

• Clarify the intent of § 61.23(d) regulatory language with regard to how the proposed duration periods will be implemented. (3 comments)

Discussion of Final Rule

Analysis of Comments

As noted above, some commenters requested that the FAA provide relief beyond what was proposed, while others requested that the FAA adopt more rigid policies, even reporting requirements, to more closely monitor any changes in medical qualification status that a medical certificate holder may experience. We have considered the comments and provide our analysis below.

Specific Reporting Requirement

The NTSB suggested that pilots be required to report potentially disqualifying medical conditions to the FAA in a timely fashion if such conditions develop between examinations. The NTSB referenced international reporting requirement practices, including the ICAO Recommended Practice 1.2.6.1.1, which states the following:

1.2.6.1.1 Recommendation.—License holders should inform the Licensing Authority of confirmed pregnancy or any decrease in medical fitness of a duration of more than 20 days or which requires continued treatment with prescribed medication or which has required hospital treatment.

It also referenced a requirement of the European Joint Aviation Authorities, JAR FCL 3.040 which states the following:

JAR–FCL 3.040 Decrease in Medical Fitness

(c) Holders of medical certificates shall, without undue delay, seek the advice of the AMS, an AMC or an AME when becoming aware of:

(1) Hospital or clinic admission for more than 12 hours; or

(2) surgical operation or invasive procedure; or

(3) the regular use of medication; or

(4) the need for regular use of correcting lenses.

The CAMA also suggested that the FAA develop a more sophisticated system for pilots to report medical conditions.

The FAA disagrees that a specific reporting requirement is warranted and believes that FAA policy and existing regulation meet the intent of the international standard. Long-standing FAA regulation (§ 61.53) requires that before every flight a pilot should evaluate fitness to fly, not just when the decrease in medical fitness would last more than 20 days or when it requires continued treatment. Existing § 61.53 also specifies that medical certificate holders may not exercise pilot privileges if they are ''taking medication or receiving other treatment for a medical condition that results in the person being unable to meet the requirements for the medical certificate necessary for the pilot operation.'' Individuals with a medical certificate who choose to exercise pilot privileges are bound by the FAA's disqualifying medical conditions set forth under part 67 as they are by any decrease in general medical condition as set forth under § 61.53. The provisions of § 61.53 are referenced on the reverse side of the medical certificate which pilots are required to carry with them at all times when they exercise flight privileges. The ability to certify no known medical conditions in order to ensure the safe operation of aircraft is a required, critical component of a pilot's flight planning procedures.

Pilot safety brochures, widely disseminated to the pilot community on our Web site and by our system of approximately 4,000 AMEs across the country, emphasize the importance of good decision-making before flying. We have many brochures that provide guidance about issues such as medications, fatigue, vision, and spatial disorientation among many others. We always advise pilots to check with the FAA or their AME if they have any concerns, and to have their private physicians and pharmacists check with their AME if there is any uncertainty about medical status before flying. By way of example, our pilot safety brochure entitled ''Medications and Flying'' emphasizes the importance of fully understanding an existing or underlying medical condition and the potential for adverse reactions or side effects of medications. This brochure advises pilots of the following:

• If you must take over-the-counter medications:

• Read and follow the label directions

• If the label warns of significant side effects, do not fly after taking the medication until at least two dosing intervals have passed. For example, if the directions say to take the medication every 6 hours, wait until at least 12 hours after the last dose to fly.

• Remember that you should not fly if the underlying condition that you are treating would make you unsafe if the medication fails to work.
• Never fly after taking a new medication for the first time.
• As with alcohol, medications may impair your ability to fly—even though you feel fine.
• If you have questions about a medication, ask your aviation medical examiner.
• When in doubt don't fly.

Adding a specific reporting requirement for our system of approximately a half million pilots would be difficult to implement and hard to enforce. There are no apparent adverse trends that would indicate a need for a specific reporting requirement. Adding a specific reporting requirement would require further rulemaking, new forms, increased paperwork and recordkeeping requirements, and further guidance to pilots and to AMEs. The FAA also notes that a modification for current ICAO Recommended Practice 1.2.6.1.1 (referenced above) is in the planning stages that would remove language that indicates a decrease in medical fitness of more than 20 days should be reported.

National Driver Registry Access

At the time of application for FAA medical certification, individuals must provide express consent to grant the FAA the right to review their NDR records. This information allows the FAA to check applicants' driving records for any instances of substance abuse and dependence disorders which may provide cause for denying a medical certificate.

The NTSB commented that ''an unintended effect of extending the time interval between examinations might be to increase the interval between NDR inquiries.'' The CAMA stated that ''if the examination frequency is extended to a 60-month period, it would be possible for an airman to receive a DWI and have it dropped from the NDR database before presenting for their next required examination.'' The NTSB indicated that the FAA should ''require policy changes as necessary to ensure an appropriate frequency of NDR database evaluations that is no less than currently performed.''

Currently, on Item 20 of FAA Form 8500–8, Application for Airman Medical Certificate, an applicant gives express consent for FAA to access his or her NDR records as part of the evaluation for a medical certificate. Such consent is required by the National Driver Registry Act, which provides that the FAA's access to the NDR records be made upon an express request from the medical certificate applicant to search his or her driving records. With the applicant's consent, the FAA is authorized to obtain a single, 3-year look-back of the applicant's driving records. As some commenters noted, adoption of the proposal to extend the duration of certain medical certificates from 3 to 5 years would result in a situation where the FAA would not obtain the applicant's NDR records for the first 2 years of the 5-year period prior to the next application for a medical certificate. This reality, however, is not sufficiently problematic to justify abandoning the proposal for a number of reasons.

First and most importantly, the medical certification process, including the duration of a medical certificate to engage in specific aviation activities, should be based on appropriate medical information and judgment, not on the availability of a particular compliance tool to cross-match information.

Second, even as a compliance tool, NDR access does not cover all piloting activities. Glider and balloon piloting, as well as operation of an ultralight vehicle under 14 CFR Part 103, do not require medical certification, and thus there is no NDR access undertaken. Similarly, sport piloting does not require a medical certificate if an individual chooses to use a U.S. driver's license as a medical qualification.

Third, current regulations obligate pilots to provide the FAA with a written report of any motor vehicle action within 60 days of the action. This includes any conviction related to the operation of a motor vehicle while intoxicated or impaired by alcohol or a drug, as well as any action taken by the State to cancel, suspend, or revoke a license to operate a motor vehicle based on intoxication or impairment.

As required under long-standing § 61.15(e) reporting requirements, all medical certificate holders must provide ''a written report of each motor vehicle action to the FAA.'' The intent of this requirement is explained in detail to pilots under ''Frequently Asked Questions'' on the FAA Web site. All pilots must send a Notification Letter to the FAA's Security and Investigations Division within 60 calendar days of the effective date of an alcohol-related conviction or administrative action. Each event, conviction, or administrative action, requires a separate Notification Letter.

The inability to reach back to the fourth and fifth year of the prior 5-year period through the NDR would have an impact only if the individual had violated the reporting requirements. The failure to have reported the information to the FAA would itself be a violation that could lead to the suspension or revocation of the individual's pilot certificate. Thus, there are substantial incentives to provide the information.

Fourth, the FAA is considering seeking a statutory change to permit a 5-year access period through the NDR. At the time of the original statute in the late 1980s that gave the FAA a 3-year period of access to the NDR, the period authorized exceeded the duration of all classes of medical certificates issued by the FAA. Later legislative action under the Pilot Records Improvement Act of 1996 authorized a 5-year access to the NDR in the context of air carrier operations. In light of the change to the duration of certain medical certificates made by this final rule, the FAA believes a corresponding change to NDR access would receive substantial support by the Congress.

Unintended Effects of Amending § 61.23(d): Medical Certificates: Requirement and Duration

Some commenters requested clarification regarding the intent of the regulatory language in the proposed § 61.23(d) table.

The National Air Transport Association (NATA) commented that the proposal indicates the specified period of duration on a medical certificate is applied ''from the date of examination.'' According to NATA, however, in some cases the medical certificate is not issued on the same day as the examination. The medical certificate may be issued at a later date after further review is conducted. NATA stated that duration should be calculated from the date of issuance, not the date of examination. ''This is currently how expiration dates are typically determined, although it is not specified in the regulations.''

According to another commenter: ''for some pilots around age 40, the proposed rules actually reduce the duration of some medical certificates and increase the burden of compliance.'' The commenter indicated that, under existing § 61.23(d), the age at examination sets duration while under proposed § 61.23(d), the age at operation sets duration. The commenter interpreted this to mean that ''a medical used for third-class operations that is obtained shortly before the 40th birthday will expire in 24 months under the proposed rules instead of 36 months under the existing rules.'' He stated: ''For example, a pilot born June 1, 1965, gets a third-class medical on May 15, 2005. Under the current rule, this

expires on May 31, 2008, but under the proposed rule, the expiration date will be May 31, 2007.''

One commenter indicated that the second column of the proposed table for § 61.23(d) is confusing and suggested that it be modified to read ''And you are at the date of the examination'' rather than ''And you are.''

The FAA's intent on the duration of medical certificates has not changed. As specified in the preamble to the proposal, these standards are applied ''according to the date of examination placed on the medical certificate and in accordance with duration periods specified under § 61.23(d).'' An FAA medical certificate lists only a ''Date of Examination,'' not a date of issuance and duration standards are applied according to the date of examination placed on the medical certificate unless otherwise limited, as indicated under the section of the certificate entitled ''Limitations.'' Each medical certificate must bear the same date as the date of medical examination regardless of the date the certificate is actually issued. To respond to commenters, the FAA has revised the § 61.23(d) table to better clarify its intent.

The new duration periods will be effective the day this rule is published and will affect current medical certificates holders. First- and third-class medical certificate holders, who were under age 40 on the date of the application of their medical certificate, will be covered by the new, longer durations established under § 61.23(d). To determine the duration of one's medical certificate, one should examine two pertinent dates displayed on each medical certificate: The date of the applicant's birth, which determines the applicant's age at the time of the application, and the date of the applicant's medical examination. This means, for example, if you were under age 40 at the time of the application and you hold a first-class medical certificate with a date of examination dating back 5 months prior to the adoption of this provision of the final rule, then your medical certificate for airline transport pilot operations will expire according to the new annual standard and not the current 6-month standard. Using another example, if you were under age 40 at the time of the application and you hold a third-class medical certificate, then your medical certificate for private or recreational operations will expire according to the new 5-year standard and not the current 3-year standard. Affected first- and third-class medical certificate holders must look at the date of examination on their existing medical certificate and recalculate duration as set forth under new § 61.23(d).

In addition, it should be noted that the ''Conditions of Issue'' on the reverse side of the existing medical certificate (FAA Form 8500–9) for affected first- and third-class medical certificate holders no longer will be accurate for certain medical certificate holders once this rule becomes effective because existing § 61.23 duration standards are referenced. The FAA will be using new medical certificates with updated ''Conditions of Issue'' on the reverse side of the medical certificate following rule issuance. Until such time as you renew your medical certificate, therefore, you should be aware of these outdated ''Conditions of Issue'' on the reverse side of your existing medical certificate. You should carry a copy of the new duration standards with you when you fly, especially if you fly internationally, in order to demonstrate that the duration of your existing medical certificate is in compliance with new FAA medical certificate duration standards.

Duration of a Medical Certificate When Exercising Sport Pilot Privileges (When You Choose To Medically Qualify With an FAA Medical Certificate Rather Than a U.S. Driver's License)

A commenter indicated that proposed and existing § 61.23(d) do not address individuals who may choose to hold a medical certificate rather than use their U.S. driver's license to medically qualify to exercise sport pilot privileges. This commenter holds a first-class medical certificate and will soon stop flying professionally. He plans to maintain a current FAA first-class medical certificate but will be exercising sport pilot privileges only. This commenter requested that the FAA clarify in the final rule the intended duration period of a medical certificate when used as medical qualification to exercise sport pilot privileges rather than a U.S. driver's license.

The FAA believes that the comment has merit and has adjusted § 61.23(d) accordingly.

Comments Beyond the Scope of the Notice

The FAA received comments requesting changes beyond what was proposed. One commenter requested extended duration on a second-class medical certificate and others suggested extended duration for individuals over, as well as under, age 40. Further, some commenters asked that recreational pilots be allowed to medically qualify using a U.S. driver's license in lieu of an FAA medical certificate.

All these proposed changes are beyond the scope of the proposal.

Existing U.S. medical certificate duration standards for commercial pilots under age 40 in a multi-crew setting currently are the same as the ICAO standards; therefore, the FAA did not propose a change to FAA second-class medical certificate duration standards. Proposing or adopting such a change would create a difference with existing international standard. The FAA proposed to extend duration and limit it to under-age-40 individuals for the same reason. Extending the duration any further would put the United States out of compliance with international standards, and we have no experience or basis to support doing so at this time. Today's action is based, in part, on international experience and on 10 years of FAA experience with extended duration on third-class medical certificates (from 2 years to 3 years) for individuals under age 40.

The FAA proposal did not address, or propose to amend, standards for recreational pilots other than, for certain pilots, the duration of a third-class medical certificate, required when exercising recreational pilot privileges. The only pilots currently allowed to medically qualify using a U.S. driver's license are sport pilots. The FAA did not find cause during sport pilot rulemaking deliberations, and at this time does not have sufficient experience certificating sport pilots, to reconsider the third-class medical certificate standard for the exercise of recreational pilot privileges.

Related Activity

Student Pilot Certificate Duration

On February 7, 2007, the FAA issued a proposal that would amend, in part, existing § 61.19(b) to extend the duration of a student pilot certificate from 24 months to 36 months for individuals under age 40 [72 FR 5806]. Subsequently this proposed action was issued to extend the duration of medical certificates. The FAA received comments to both proposals that support extending the duration of a student pilot certificate. The FAA will take these comments into consideration and dispose of them in the final rule that will address the February 7, 2007 proposal.

ICAO Audit

ICAO, the aviation wing of the United Nations, audited the United States Government's civil aviation safety oversight system from November 5–19, 2007, as part of the Universal Safety Oversight Audit Program (USOAP). The

ICAO USOAP teams assess whether a signatory state meets international aviation standards. The audit is very comprehensive and part of the focus is on licensing systems and keeping them aligned with international aviation standards.

ICAO findings for many signatory states, including the United States, have revealed a need to revise licensing systems to ensure conformance with ICAO Standards and Recommended Practices. Specifically, ICAO recommends endorsements on licenses for any person holding a license who does not satisfy in full the conditions set forth in international standards. These individuals must have endorsed on or attached to their license a complete enumeration of the particulars in which they do not satisfy such conditions.

In order to comply with our international obligations to ICAO, the FAA has determined that affected persons, those who have been granted an Authorization for Special Issuance of a Medical Certificate (Authorization) or a Statement of Demonstrated Ability (SODA) must carry their Authorization or SODA with them when exercising pilot privileges. In order to satisfy this ICAO obligation, the FAA has amended existing § 67.401(j) accordingly.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the amended information collection requirements in this final rule to the Office of Management and Budget for its review. The paperwork burdens and cost impact associated with revising, reprinting, and re-distributing this form, as described in the proposal, have been addressed and no longer apply as a cost of the rule. OMB approved the collection of this information and assigned OMB Control Number 2120–0034.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The intent of this final rule, in part, is to come into compliance with existing ICAO medical assessment duration standards. Therefore, this final rule will not create any differences with ICAO.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This rule extends the duration of first- and third-class medical certificates for certain individuals. A first-class medical certificate is required when exercising airline transport pilot privileges and at least a third-class medical certificate when exercising private pilot privileges. Certain conforming amendments to medical certification procedures and some general editorial amendments also are adopted. The intent of this action is to improve the efficiency of the medical certification program and service provided to medical certificate applicants. Over 10 years, this final rule is estimated to generate $91.7 million ($68.9 million, discounted) of cost-savings.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) (Pub. L. 96–354) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will not impact small entities. It will impact primarily first- and third-class medical certificate holders who are expected to save about $300.00 each time that they do not have to renew their medical certificates. Consequently, as the Acting Administrator of the Federal Aviation Administration, I certify that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary

obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This final rule does not contain such a mandate. The requirements of title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Good Cause for Immediate Adoption of § 61.23(d)

Section 553(d) of the Administrative Procedures Act requires that rules become effective no less than 30 days after their issuance. Paragraph (d)(1) allows an agency to make a rule effective immediately, however, if the agency provides good cause for immediate adoption. The FAA finds that good cause exists for immediate adoption of the provisions of § 61.23(d) of this final rule. Adopting § 61.23(d) immediately—on the date of publication, rather than 30 days after issuance—prevents individuals whose medical certificate might expire within that 30-day interim from having to renew a medical certificate that otherwise may have remained valid if not for the 30-day effective date requirement.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation Safety, and Reporting and recordkeeping requirements.

14 CFR Part 65

Airmen other than flight crewmembers.

14 CFR Part 67

Aircraft, Airmen, Alcohol abuse, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.23 by revising paragraph (d)(1) to read as follows:

§ 61.23 Medical certificates: Requirement and duration.

* * * * *

(d) *Duration of a medical certificate.* (1) Use the following table to determine duration for each class of medical certificate:

If you hold	And on the date of examination for your most recent medical certificate you were	And you are conducting an operation requiring	Then your medical certificate expires, for that operation, at the end of the last day of the
(i) A first-class medical certificate.	(A) Under age 40	an airline transport pilot certificate	12th month after the month of the date of examination shown on the medical certificate.
	(B) Age 40 or older	an airline transport pilot certificate	6th month after the month of the date of examination shown on the medical certificate.
	(C) Any age	a commercial pilot certificate or an air traffic control tower operator certificate.	12th month after the month of the date of examination shown on the medical certificate.
	(D) Under age 40	a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required pilot flight crewmember in operations other than glider or balloon), a student pilot certificate, or a sport pilot certificate (when not using a U.S. driver's license as medical qualification).	60th month after the month of the date of examination shown on the medical certificate.

If you hold	And on the date of examination for your most recent medical certificate you were	And you are conducting an operation requiring	Then your medical certificate expires, for that operation, at the end of the last day of the
	(E) Age 40 or older	a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required pilot flight crewmember in operations other than glider or balloon), a student pilot certificate, or a sport pilot certificate (when not using a U.S. driver's license as medical qualification).	24th month after the month of the date of examination shown on the medical certificate.
(ii) A second-class medical certificate.	(A) Any age	a commercial pilot certificate or an air traffic control tower operator certificate.	12th month after the month of the date of examination shown on the medical certificate.
	(B) Under age 40	a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required pilot flight crewmember in operations other than glider or balloon), a student pilot certificate, or a sport pilot certificate (when not using a U.S. driver's license as medical qualification).	60th month after the month of the date of examination shown on the medical certificate.
	(C) Age 40 or older	a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required pilot flight crewmember in operations other than glider or balloon), a student pilot certificate, or a sport pilot certificate (when not using a U.S. driver's license as medical qualification).	24th month after the month of the date of examination shown on the medical certificate.
(iii) A third-class medical certificate.	(A) Under age 40	a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required pilot flight crewmember in operations other than glider or balloon), a student pilot certificate, or a sport pilot certificate (when not using a U.S. driver's license as medical qualification).	60th month after the month of the date of examination shown on the medical certificate.
	(B) Age 40 or older	a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required pilot flight crewmember in operations other than glider or balloon), a student pilot certificate, or a sport pilot certificate (when not using a U.S. driver's license as medical qualification).	24th month after the month of the date of examination shown on the medical certificate.

* * * * *

■ 3. Amend § 61.29 by revising paragraph (b) to read as follows:

§ 61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.

* * * * *

(b) A request for the replacement of a lost or destroyed medical certificate must be made by letter to the Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 26200, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

* * * * *

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 4. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 5. Amend § 65.16 by revising paragraph (c) introductory text to read as follows:

§ 65.16 Change of name: Replacement of lost or destroyed certificate.

* * * * *

(c) An application for a replacement of a lost or destroyed medical certificate is made by letter to the Department of Transportation, Federal Aviation Administration, Aerospace Medical Certification Division, Post Office Box 26200, Oklahoma City, OK 73125, accompanied by a check or money order for $2.00.

* * * * *

PART 67—MEDICAL STANDARDS AND CERTIFICATION

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 7. Revise § 67.3 to read as follows:

§ 67.3 Issue.

A person who meets the medical standards prescribed in this part, based on medical examination and evaluation of the person's history and condition, is entitled to an appropriate medical certificate.

■ 8. Add § 67.4 to read as follows:

§ 67.4 Application.

An applicant for first-, second- and third-class medical certification must:

(a) Apply on a form and in a manner prescribed by the Administrator;

(b) Be examined by an aviation medical examiner designated in accordance with part 183 of this chapter. An applicant may obtain a list of aviation medical examiners from the FAA Office of Aerospace Medicine homepage on the FAA Web site, from any FAA Regional Flight Surgeon, or by contacting the Manager of the Aerospace Medical Education Division, P.O. Box 26200, Oklahoma City, Oklahoma 73125.

(c) Show proof of age and identity by presenting a government-issued photo identification (such as a valid U.S. driver's license, identification card issued by a driver's license authority, military identification, or passport). If an applicant does not have government-issued identification, he or she may use non-photo, government-issued identification (such as a birth certificate or voter registration card) in conjunction with photo identification (such as a work identification card or a student identification card).

■ 9. Amend § 67.401 by revising paragraph (j) to read as follows:

§ 67.401 Special issuance of medical certificates.

* * * * *

(j) An Authorization or SODA granted under the provisions of this section to a person who does not meet the applicable provisions of subparts B, C, or D of this part must be in that person's physical possession or readily accessible in the aircraft.

■ 10. Revise § 67.405 to read as follows:

§ 67.405 Medical examinations: Who may perform?

(a) *First-class.* Any aviation medical examiner who is specifically designated for the purpose may perform examinations for the first-class medical certificate.

(b) *Second- and third-class.* Any aviation medical examiner may perform examinations for the second-or third-class medical certificate.

§ 67.411 [Removed and Reserved]

■ 11. Remove and reserve § 67.411.

■ 12. Revise § 67.413 to read as follows:

§ 67.413 Medical records.

(a) Whenever the Administrator finds that additional medical information or history is necessary to determine whether you meet the medical standards required to hold a medical certificate, you must:

(1) Furnish that information to the FAA; or

(2) Authorize any clinic, hospital, physician, or other person to release to the FAA all available information or records concerning that history.

(b) If you fail to provide the requested medical information or history or to authorize its release, the FAA may suspend, modify, or revoke your medical certificate or, in the case of an applicant, deny the application for a medical certificate.

(c) If your medical certificate is suspended, modified, or revoked under paragraph (b) of this section, that suspension or modification remains in effect until you provide the requested information, history, or authorization to the FAA and until the FAA determines that you meet the medical standards set forth in this part.

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 13. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 44721, 45303.

■ 14. Amend § 183.11 by revising paragraph (a) to read as follows:

§ 183.11 Selection.

(a) The Federal Air Surgeon, or his or her authorized representatives within the FAA, may select Aviation Medical Examiners from qualified physicians who apply. In addition, the Federal Air Surgeon may designate qualified forensic pathologists to assist in the medical investigation of aircraft accidents.

* * * * *

■ 15. Revise § 183.15 to read as follows:

§ 183.15 Duration of certificates.

(a) Unless sooner terminated under paragraph (b) of this section, a designation as an Aviation Medical Examiner or as a Flight Standards or Aircraft Certification Service Designated Representative as described in §§ 183.21, 183.23, 183.25, 183.27, 183.29, 183.31, or 183.33 is effective until the expiration date shown on the document granting the authorization.

(b) A designation made under this subpart terminates:

(1) Upon the written request of the representative;

(2) Upon the written request of the employer in any case in which the recommendation of the employer is required for the designation;

(3) Upon the representative being separated from the employment of the employer who recommended him or her for certification;

(4) Upon a finding by the Administrator that the representative has not properly performed his or her duties under the designation;

(5) Upon the assistance of the representative being no longer needed by the Administrator; or

(6) For any reason the Administrator considers appropriate.

Issued in Washington, DC, on July 10, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–16911 Filed 7–23–08; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM07–21–001; Order No. 708–A]

Blanket Authorization Under FPA Section 203

Issued July 17, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: In this order on rehearing, the Federal Energy Regulatory Commission (Commission) affirms its determinations in part and grants rehearing in part of Order No. 708. Order No. 708 amended the Commission's regulations to establish blanket authorizations under section 203 of the Federal Power Act to facilitate investment in the electric industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions.

EFFECTIVE DATES: This final rule; order on rehearing will become effective August 25, 2008.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Blanket Authorization Under FPA Section 203; Docket No. RM07–21–001: Order On Rehearing; Order No. 708–A

Issued July 17, 2008.

1. This order addresses requests for rehearing and clarification of Order No. 708.[1] That order amended Commission regulations pursuant to section 203 of the Federal Power Act (FPA) to provide for additional blanket authorizations under FPA section 203(a)(1).[2] This order on rehearing affirms the five categories of blanket authorizations set forth in Order No. 708 with certain modifications, and, as discussed below, grants, in part, and denies, in part, the requests for rehearing.

I. Background

2. Based on comments to the Blanket Authorization Notice of Proposed Rulemaking,[3] the Commission in Order No. 708 established five blanket authorizations to facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions. First, a public utility was granted a blanket authorization under FPA section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization under 18 CFR 33.1(c)(2)(ii) if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility.[4] Second, a public utility was granted a blanket authorization under FPA section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization under 18 CFR 33.1(c)(8)[5] if, after the transfer, the holding company and any of its associate or affiliate companies, in the aggregate, will own less than 10 percent of the outstanding voting interests of such public utility.[6] Third, a public utility was granted a blanket authorization under FPA section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in 18 CFR 33.1(c)(9).[7] Fourth, a public utility was granted blanket authorization under FPA section 203(a)(1) to transfer its outstanding voting securities to any holding company granted a blanket authorization in 18 CFR 33.1(c)(10).[8]

3. Fifth, a public utility was granted a blanket authorization under FPA section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the contract does not convey control over the operation of a generation or transmission facility, the parties to the transaction are neither affiliates nor associate companies, and the acquirer is a public utility.[9] In addition, Order No. 708 clarified certain aspects of existing blanket authorizations and clarified the terms ''affiliate'' and ''captive customers.''

II. Requests for Rehearing

4. Order No. 708 was published in the **Federal Register** on February 29, 2008.[10] Timely requests for rehearing were filed by the American Public Power Association and the National Rural Electric Cooperative Association (APPA/NRECA), the Financial Institutions Energy Group (Financial Group), and the Electric Power Supply Association (EPSA). The Edison Electric Institute (EEI) filed a timely request for rehearing and clarification.

5. As discussed below, parties seek rehearing and/or clarification with respect to: (1) Extending the blanket authorization under 18 CFR 33.1(c)(12) to cover public utility dispositions, not just to certain holding companies but also to non-holding companies; (2) the blanket authorization in 18 CFR 33.1(c)(16) pertaining to the transfer of jurisdictional contracts; (3) the definition and/or scope of hedging activities permitted under 18 CFR 33.1(c)(10); (4) the determination in Order No. 708 not to impose additional reporting requirements related to the new blanket authorizations; and (5) clarification of the existing blanket authorization under 18 CFR 33.1(6) (authorization of internal reorganization not affecting a traditional public utility) identified in the Supplemental Policy Statement.[11]

III. Discussion

A. Whether To Extend the Blanket Authorization in 18 CFR 33.1(c)(12) to Non-Holding Companies

6. In Order No. 708, the Commission adopted the proposed blanket authorization from the Blanket Authorization NOPR without modification.[12] In order to prevent public utilities from transferring less than 10 percent of their voting securities in successive transfers, the Commission retained the ''in aggregate'' limitation contained in 18 CFR 33.1(c)(12). In addition, the Commission rejected requests to extend the blanket authorization to ''any person.'' The Commission stated that these requests would expand the blanket authorization proposed in the Blanket Authorization NOPR beyond its original intent. The Commission also noted that if it were to expand the blanket authorization to ''any person,'' it would need to establish appropriate reporting requirements so that the Commission could monitor transfers to non-holding companies.[13]

Requests for Rehearing

7. Financial Group requests rehearing of the Commission's decision declining to extend the blanket certificate to cover public utility dispositions to non-holding companies under 18 CFR 33.1(c)(12), subject to the same ''in aggregate'' limitations imposed on transfers to holding companies. Financial Group argues that the distinction between holding companies and non-holding companies is immaterial since the same benefits of reducing regulatory burdens and

[1] *Blanket Authorization Under FPA Section 203,* Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶31,265 (2008).

[2] 16 U.S.C. 824b(a)(1).

[3] *Blanket Authorization Under FPA Section 203,* 72 FR 41640 (July 31, 2007), FERC Stats. & Regs. ¶ 32,619 (2007) (Blanket Authorization NOPR).

[4] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 19 and 18 CFR 33.1(c)(12).

[5] These holding companies' ownership of utilities includes only exempt wholesale generators (EWGs), foreign utility companies (FUCOs), and qualifying facilities (QFs).

[6] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 40.

[7] *Id.* P 43. These holding companies are regulated by the Board of Governors of the Federal Reserve Bank or by the Comptroller of the Currency.

[8] *Id.* P 45. This authorization applies, in certain circumstances, to holding companies conducting underwriting activities or engaging in hedging transactions, generally limited to a 10 percent voting interest.

[9] *Id.* P 51–53 and 18 CFR 33.1(c)(16).

[10] *Supra* note 1.

[11] *FPA Section 203 Supplemental Policy Statement,* 72 FR 42277 (August 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration,* 122 FERC ¶ 61,157 (2008) (Supplemental Policy Statement).

[12] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 19. 18 CFR 33.1(c)(12) states that a public utility will be granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to any holding company granted blanket authorizations in 18 CFR 33.1(c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of the public utility.

[13] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20.

encouraging investment that accrue when applying this blanket to distributions to a holding company also will occur if the blanket is applied to distributions to a non-holding company. Financial Group reasons that it is the nature of the interest being disposed—less than 10 percent of the voting securities being held in the aggregate—and not whether the acquirer is a holding company that determines whether the disposition conveys control.

8. Financial Group argues that the concern underlying the Commission's refusal to extend the blanket certificate to cover public utility dispositions to non-holding companies could be addressed without the need for issuing such blanket authorizations on a case-by-case basis. Financial Group proposes reporting requirements for transactions involving non-holding companies that it says should be at least as helpful to the Commission as the preexisting reporting requirements applicable to holding companies.[14] In addition, Financial Group argues that this expansion of the blanket certificate is not beyond the scope of the Blanket Authorization NOPR.

Commission Determination

9. As a preliminary matter, and upon further consideration, we do not consider Financial Group's request to be beyond the scope of the Blanket Authorization NOPR. In general, the Commission is permitted to learn from comments submitted during its rulemaking process.[15] In the Blanket Authorization NOPR, the Commission sought comments on proposals to reduce regulatory burdens and encourage investment under FPA section 203 while simultaneously protecting the public interest. Financial Group's proposal to extend the proposed blanket authorization under 18 CFR 33.1(c)(12) to cover ''any person'' rather than just certain holding companies is a variation of the originally proposed regulation, and therefore, is a logical outgrowth of the Blanket Authorization NOPR.[16] Interested parties have had sufficient notice of the type of regulation that the Commission might adopt, and reasonably could have anticipated that other commenters might seek to expand the proposal. Moreover, commenters will have the opportunity for rehearing with respect to any modifications to the originally proposed section 33.1(c)(12).

10. Substantively, the distinction in 18 CFR 33.1(c)(12) between holding companies and non-holding companies is not determinative as to whether a particular transaction is consistent with the public interest, particularly if the ''in aggregate'' 10 percent limitation is in place to ensure that there is no likely opportunity for a transfer of control of a public utility. Moreover, expanding the 18 CFR 33.1(c)(12) blanket authorization to include non-holding companies would reduce regulatory burdens and encourage investment without causing harm to competition or captive customers. With such an expansion, however, it is important for the Commission and the public to monitor these activities. As the Commission stated in Order No. 708, although there is a presumption that less than 10 percent of a utility's shares will not result in a change of control, this presumption is rebuttable.[17] In some instances, the transfer of less than 10 percent of voting shares may constitute a transfer of control. Accordingly, we will extend the blanket authorization to ''any person,'' but we will require additional reporting for non-holding companies such as the requirements proposed by Financial Group.

11. Specifically, the Commission will amend its regulations in 18 CFR 33.1(c)(12) to also authorize a public utility to transfer its outstanding voting securities to any person other than a holding company if, after the transfer, such person and any of its associate or affiliate companies will own less than 10 percent of the outstanding voting interests of such public utility. In addition, the Commission will adopt a reporting requirement for entities that transact under this blanket authorization. In order to properly tailor additional reporting requirements, however, we will issue concurrently with this order a request for supplemental comments that will seek comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization. The expanded blanket authorization under 18 CFR 33.1(c)(12) will not become effective until a Commission decision on reporting requirements becomes effective. We further note that the Commission retains its jurisdiction under section 203(b) of the FPA to issue further orders as appropriate with respect to transactions authorized under blanket authority.[18]

B. Blanket Authorization for the Transfer of Jurisdictional Contracts Under 18 CFR 33.1(c)(16)

1. Order No. 708

12. Order No. 708 extended a blanket authorization under FPA section 203(a)(1) for the acquisition and disposition of jurisdictional contracts where neither the acquirer nor the transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the contract does not convey control over the operation of a generation or transmission facility, the parties to the transaction are neither associate nor affiliate companies, and the acquirer is a public utility.[19] Based, in part, on the Commission's experience with intra-corporate transfers of jurisdictional contracts and concerns raised in the Blanket Authorization NOPR, Order No. 708 narrowed this blanket authorization somewhat from the proposal in the Blanket Authorization NOPR, to include the phrase ''the parties to the transaction are neither associate nor affiliate companies, and the acquirer is a public utility.'' [20] The Commission also stated that this added condition (that parties to the transaction are neither affiliated nor associated companies) helps ensure that the transfer of such contracts would be consistent with the public interest.[21]

Requests for Rehearing

13. APPA/NRECA argues that the Commission has not shown how this blanket authorization is consistent with the public interest. If the blanket authorization is not retracted, APPA/NRECA asks the Commission to narrow its scope by excluding contracts in

[14] Financial Group proposes that within a specified time following consummation of the transaction (*e.g.*, 30 days), the following information be reported: (1) Names of all parties to the transaction; (2) identification of both the pre-transaction and post-transaction voting security holdings (and the percentage ownership) in the public utility held by the acquirer and its associates or affiliate companies; (3) the date the transaction was consummated; (4) identification of any public utility or holding company affiliates of the parties to the transaction; and (5) (if the Commission has particular concerns as to whether such a transaction would result in cross-subsidization) the same type of statement currently required under 18 CFR 33.2(j)(1), which describes Exhibit M to an FPA section 203 filing.

[15] *Daniel Int'l Corp.* v. *OSHA,* 656 F.2d 925, 932 (4th Cir. 1981) (The requirement of submission of a proposed rule for comment does not automatically generate a new opportunity for comment merely because the rule promulgated differs from the rule proposed, partly at least in response to submission).

[16] *See Owner-Operator Independent Drivers Assoc., Inc.* v. *Federal Motor Carrier Safety Administration,* 494 F.3d 188, 209 (DC Cir. 2007) (the object of the logical outgrowth test is one of fair notice).

[17] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20.

[18] 16 U.S.C. 824b(b).

[19] 18 CFR 33.1(c)(16).

[20] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 51.

[21] *Id.* P 52.

which a load-serving entity (LSE) is the purchaser and does not consent to the subject transfer. It contends that the existing authorization creates a situation in which public power utilities, cooperatives and other LSEs might have their contract sold without their consent and without specific Commission approval. It claims that these LSEs rely on these contracts for reliable power and the blanket authorization would allow for the transfer of the contract from a well-established marketer or generator with whom the LSE originally contracted to an entity with less assurance of its ability to perform. In addition, APPA/NRECA argues that the Commission's reasoning in dismissing the same argument in Order No. 708 is flawed.

14. Further, APPA/NRECA claims that this blanket authorization itself could undermine LSEs' bargaining power and their ability to enforce their contractual rights. It notes that many standard power contracts contain ''boilerplate'' language that requires a buyer's consent for the transfer of a contract not to be ''unreasonably withheld.'' It argues that if the Commission grants this blanket authorization on the basis that it is consistent with the public interest, sellers could then argue that it is unreasonable for a buyer to withhold its consent for a given transfer. Thus, APPA/NRECA claims that this blanket authorization could force LSEs to bargain for stronger prohibitions limiting assignment in their contracts at the likely expense of other contract features and to enforce such language by litigation when necessary.

15. EPSA and EEI request the removal of the clause ''the parties to the transaction are neither associate nor affiliate companies'' from the blanket authorization granted in 18 CFR 33.1(c)(16). EPSA and EEI state that the clause was added in Order No. 708 without being previously proposed in the Blanket Authorization NOPR or sought by any commenter. In addition, both EPSA and EEI argue that the clause conflicts with the blanket orders that the Commission granted in Order No. 669–A.[22] EPSA argues that the clause limits blanket certificate availability to transactions involving only non-affiliated entities, and, therefore, it reverses the blanket certificate for internal reorganizations granted in 18 CFR 33.1(c)(6)§ [23] without making a finding that Order No. 669–A is no longer valid. EEI argues that the clause undercuts the blanket certificate authorizing the transfer of wholesale market-based contracts to other affiliates in 18 CFR 33.1(c)(11).[24]

16. EPSA also argues that the clause ''and the acquirer is a public utility'' should be removed. EPSA argues that there is no concern regarding competition or cross-subsidization when one affiliate transfers a wholesale contract to another affiliate, as long as the affiliates involved are not themselves traditional public utilities with captive customers. EPSA also maintains that the clause creates an unnecessary burden on the Commission and unnecessary delay and costs for the applicants.

17. EEI requests that if rehearing is not granted, the Commission specify that 18 CFR 33.1(c)(16) does not override other blanket authorizations or require approval of a transaction if another blanket authorization such as 18 CFR 33.1(c)(11) (authorizing the transfers of wholesale market-based rate contracts to other affiliates) applies.

Commission Determination

18. APPA/NRECA raised no new arguments on rehearing, and its request that the blanket authorization in 18 CFR 33.1(c)(16) be retracted or modified is denied.

19. We found in Order No. 708 that the transfer of a wholesale power contract which does not provide for the transfer of control of generation or transmission cannot affect horizontal or vertical market power. In addition, we note that Order No. 708 added a condition to address, in part, the concerns raised by APPA/NRECA.[25] We also found that, with the modification proposed by APPA/NRECA, the transfer of a wholesale power contract from one party that does not have captive customers or own or provide transmission service over jurisdictional transmission facilities, to another party that also does not have captive customers or own or provide transmission service over jurisdictional transmission facilities, cannot affect the rates of captive customers or transmission customers (and therefore has no rate or cross-subsidization impacts). As we reasoned in Order No. 708, in response to the same arguments that APPA/NRECA raises again on rehearing, purchasers can protect their interests by exercising contractual provisions, and, if necessary, by filing an FPA section 206 complaint.[26] We note that the issuance of this blanket authorization should not be construed as an expression of opinion by the Commission as to whether it is (or is not) reasonable for an entity to withhold consent as to a particular proposed transfer. Moreover, as we noted in Order No. 708, APPA/NRECA's concerns regarding the potential effect of the blanket on the bargaining power of LSEs is a speculative matter.

20. The Commission grants EPSA's and EEI's requests to remove the clause ''the parties to the transaction are neither associate nor affiliate companies'' from 18 CFR 33.1(c)(16). EPSA and EEI have convincingly explained why the clause is inappropriate. In particular, where neither the acquirer nor the transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, and the contract does not convey control over the operation of a generation or transmission facility, the price of the jurisdictional contract's transfer does not affect the rates of captive customers or transmission customers and therefore has no rate or cross-subsidization impact affecting captive generation customers or transmission customers.

21. EPSA's request to remove from 18 CFR 33.1(c)(16) the clause ''and the acquirer is a public utility'' is denied. Order No. 708 added this clause because of the possibility of a jurisdictional contract being transferred to a non-jurisdictional entity, in which case the Commission would lose the ability to regulate the contract and parties involved.[27] EPSA has presented no

[22] *Transactions Subject to FPA Section 203*, Order No. 669, 71 FR 1348 (January 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669–A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669–B, 71 FR 42579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006).

[23] 18 CFR 33.1(c)(6) states that any public utility or any holding company in a holding company system that includes a transmitting utility or an electric utility will be granted a blanket authorization under sections 203(a)(1) or 203(a)(2) of the FPA, as relevant, for internal corporate reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues.

[24] 18 CFR 33.1(c)(11) states any public utility will be granted a blanket authorization under section 203(a)(1) of the FPA to transfer a wholesale market-based rate contract to any other public utility affiliate that has the same ultimate upstream ownership, provided that neither affiliate is affiliated with a traditional public utility with captive customers.

[25] APPA/NRECA's comments led to adding to the blanket authorization the condition that ''* * *neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities* * *'' *See* Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 48, 51.

[26] *Id.* P 52.

[27] *Id.* P 51.

reason why the clause is not necessary to prevent that possibility.

C. Hedging

1. Order No. 708

22. In Order No. 708, the Commission extended to public utilities a blanket authorization to transfer securities to holding companies that have blanket authorizations to acquire public utility securities under FPA section 203(a)(2) for certain underwriting or hedging purposes.[28] In doing so, the Commission observed that the condition for the parallel blanket authorization under FPA section 203(a)(2), limiting the acquiring entity to a voting right of less than 10 percent of the relevant class of securities, should ensure that any disposing entity facilitating such transactions does not affect a disposition or change in control of the issuer of the public utility securities.[29]

Requests for Rehearing

23. APPA/NRECA argues that this blanket authorization is contrary to the law and that the Commission should only allow such transactions on a case-by-case basis, with full disclosure of the specific business arrangements being contemplated. Because the Commission did not define ''hedging transaction(s),'' APPA/NRECA contends that the Commission cannot reasonably determine that the authorization is consistent with the public interest. It further argues that this blanket authorization, like the parallel blanket authorization under FPA section 203(a)(2), does not assure that the hedging transaction is only incidental to the acquirer's main business, since the blanket authorization does not require that the hedging transaction relate to the utility, power or energy business. APPA/NRECA believes that ratepayers should not be exposed to the complex and risky transactions sometimes undertaken by financial market participants to the harm of innocent third parties.

Commission Determination

24. While the Commission agrees with APPA/NRECA's general proposition that electric ratepayers should not be exposed to unnecessary harm caused by risky transactions of financial market participants, we disagree that the blanket authorizations previously granted to holding companies in Order No. 669–A (18 CFR 33.1(c)(10)), or the parallel authorization granted to public utilities in Order No. 708 (18 CFR 33.1(c)(15)), will cause such harm.

25. Nor do we believe that the authorization in Order No. 708 is contrary to law. These authorizations are limited, and any hedging in public utility securities that is within the scope of section 203 is allowed only to the extent that it falls under one of the Commission's blanket authorizations or a specific authorization granted by the Commission on a case-by-case basis. Specifically, an existing condition in 18 CFR 33.1(c)(10)(ii) limits the voting ability of the entity acquiring securities for hedging purposes, so transactions under the new blanket authorizations should not result in a change in control of a public utility. Furthermore, the first part of the blanket authorization, 18 CFR 33.1(c)(10)(i), concerns underwriting and is directed at financial entities such as a bank, investment bank, or broker/dealer that engages in underwriting activities that may involve public utilities, but this authorization also has a 10 percent limitation and is subject to a reporting requirement. It is unlikely that the acquirers in the hedging transactions authorized would be public utilities because most holding companies are not also public utilities as most do not operate jurisdictional facilities. In fact, we are unaware of any public utility with captive customers that engages in hedging transactions involving the securities of other public utilities.[30] Therefore, we believe that the potential for harm to ratepayers of public utilities as a result of the blanket authorization is minimal.

26. In addition, it should be noted that states oversee cost recovery associated with their franchised public utilities' hedging activities involving purchases of power or fuel as part of an overall purchasing strategy in the interests of ratepayers. We think it would be unlikely that a state regulatory body would authorize the recovery from ratepayers of the costs incurred by one public utility to engage in hedging activities concerning the securities of another public utility. We further note that the Commission is not making any finding as to whether the costs associated with such hedging are appropriately recovered in rates.

27. We reject APPA/NRECA's request to deny any blanket authority for hedging transactions. APPA/NRECA's arguments, in large part, are a collateral attack of Order No. 669–A. Order No. 669–A determined that a blanket authorization under FPA section 203(a)(2), involving hedging for holding companies was in the public interest because such a blanket authorization would not give the acquiring entity additional market power or enable it to undermine competition or disadvantage captive customers. The Commission agreed that the blanket authority would promote the public interest by bringing more capital investment to the utility industry. The Commission also found that the condition removing the holder's power to vote the securities held for hedging purposes to the extent they are 10 percent or more of the securities in the class outstanding, even though the amount held for hedging is not limited, would address its concerns regarding control.[31] Subject to certain limitations, Order No. 708 merely granted the mirror image of this blanket for public utilities under FPA section 203(a)(1), in part, because the Commission had already determined in Order No. 669–A that there were adequate controls on these transactions.

28. Further, the Commission will not codify a definition of ''hedging'' in this proceeding. This decision is based in part on our observation that hedging activities may be accomplished in a variety of ways and defining hedging may inappropriately limit it or may create situations that are inconsistent with usage by other government agencies. In general, hedging is an approach to risk management that uses

[28] 18 CFR 33.1(c)(15) states that a public utility is granted a blanket authorization under section 203(a)(1) of the FPA to transfer its outstanding voting securities to any holding company granted blanket authorization in 18 CFR 33.1(c)(10). 18 CFR 33.1(c)(10) states that any holding company, or a subsidiary of that company, is granted a blanket authorization under section 203(a)(2) of the FPA to acquire any security of a public utility or a holding company that includes a public utility: (i) for purposes of conducting underwriting activities, subject to the condition that holdings that the holding company or its subsidiary are unable to sell or otherwise dispose of within 45 days are to be treated as holdings as principal and thus subject to a limitation of 10 percent of the stock of any class unless the holding company or its subsidiary has within that period filed an application under section 203 of the FPA to retain the securities and has undertaken not to vote the securities during the pendency of such application; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held; (ii) for purposes of engaging in hedging transactions, subject to the condition that if such holdings are 10 percent or more of the voting securities of a given class, the holding company or its subsidiary shall not vote such holdings to the extent that they are 10 percent or more.

[29] Order No. 708, FERC Stats & Regs. ¶ 31,265 at P 45 (citing Order No. 669 at P 132).

[30] We note that it was the investment firm Morgan Stanley Capital Group, Inc., not a franchised public utility, that requested rehearing of Order No. 669 to request the blanket authorization regarding hedging for a non-bank holding company. *See* Order No. 669–A, FERC Stats. & Regs. ¶ 31,214 at P 119–120.

[31] Order No. 669–A, FERC Stats. & Regs. ¶ 31,214 at P 121, 132.

financial instruments to manage identified risk. We note that various regulators have defined ''hedging'' and have promulgated rules and policies concerning such activities.[32] We will generally follow those principles with respect to the blanket authorizations granted under our rules.

D. Other

1. Reporting Requirements

Requests for Rehearing

29. In Order No. 708, the Commission declined to impose additional reporting requirements in connection with the new blanket authorizations.[33] Although the Commission agreed with APPA/NRECA's argument in its comments on the Blanket Authorization NOPR that additional reporting requirements could provide greater efficiency, on balance, the Commission determined that the potential burdens would outweigh any efficiency gains.[34] In its comments on rehearing, APPA/NRECA reasserts its request that the Commission require public utilities to report all dispositions of securities undertaken pursuant to a blanket authorization on the ground that the Commission failed to explain why it dismissed its request in Order No. 708.

30. It also asks the Commission to impose a requirement that public utilities certify their continued compliance with any ''in aggregate'' limitation in light of each new transaction. APPA/NRECA argues that, since the only reporting requirement is under 18 CFR 33.1(c)(2), a transfer of control in a public utility could occur over a series of transactions without the Commission's knowledge. Accordingly, APPA/NRECA asserts that the Commission cannot be sure that it is being provided with all the information necessary to ensure that a transfer of control does not occur.

Commission Determination

31. APPA/NRECA has not presented any convincing reason to impose additional reporting requirements at this time and therefore its request for rehearing is denied. We first point out that APPA/NRECA is incorrect that there are no reporting requirements under 18 CFR 33.1(c)(9) (authorization of certain activities by a company regulated by the Board of Governors of the Federal Reserve Bank or by the Comptroller of the Currency) and 18 CFR 33.1(c)(10) (authorization for a holding company to engage in certain underwriting and hedging activities).[35] Further, the Commission does not believe that reports by a company regulated by the Board of Governors of the Federal Reserve Bank or by the Comptroller of the Currency are necessary when securities are held as a fiduciary or as principal for derivatives hedging purposes, since such activities by the holding company are overseen and closely monitored by the Board of Governors of the Federal Reserve Bank or by the Office of the Comptroller of the Currency as described in 18 CFR 33.1(c)(9). In addition, holding of shares as collateral for a loan does not change control of a public utility. Although 18 CFR 33.1(c)(10)(ii) does not have an explicit reporting requirement when securities are held for purposes of engaging in hedging transactions, this authorization does limit voting ability of the company acquiring the securities, eliminating the concern over transfer of control over a public utility. The transfer of wholesale contracts under 18 CFR 33.1(c)(16) is subject to section 205 filing requirements, which include, among other things, designation of the jurisdictional entity that will be the supplier under the contract.[36]

32. APPA/NRECA was correct in stating that 18 CFR 33.1(c)(8) (authorization for a person being a holding company solely with respect to EWGs, FUCOs, or QFs to acquire the securities of additional EWGs, FUCOs, or QFs) does not include a reporting requirement. The parallel authorization to public utilities under 18 CFR 33.1(c)(13), however, limits the acquiring holding company and its affiliates to less than 10 percent of the outstanding voting securities of the public utility. As we stated in Order No. 708, we believe this protection ensures that this blanket authorization is in the public interest.

33. The Commission does not, however, foreclose the possibility of imposing additional reporting requirements in the future, should circumstances change and it become apparent that additional reporting requirements would help us better monitor industry transactions that could adversely affect public utilities or their captive customers or transmission customers. We also note that, as discussed above, the Commission is concurrently issuing a supplemental request for comments on the narrow issue of reporting requirements for the extension of 18 CFR 33.1(c)(12) to cover public utility dispositions to non-holding companies.

2. Clarification of the Supplemental Policy Statement

Request for Clarification

34. In the Supplemental Policy Statement,[37] the Commission declined to grant a generic blanket authorization for internal corporate reorganizations for the ''transfer of assets'' from one non-traditional utility subsidiary (for example, power marketer, EWG, or qualifying facility) to another non-traditional utility subsidiary, because the Commission cannot be certain in every situation of the impact of such transactions on utility affiliates.

35. EEI requests that the Commission clarify that the internal corporate reorganization of non-traditional public utilities, such as a merger or consolidation, in which a single entity survives the transaction does not constitute the ''transfer of assets'' that the Commission has excluded from the blanket authorization. It argues that the Commission made clear in Order No. 669–A that the blanket authorization covers internal corporate reorganizations of non-traditional utilities whether they are accomplished through the acquisition of securities or through a merger or consolidation. It also argues that internal corporate reorganizations of non-traditional utilities in the form of mergers and consolidations will not cause an anticompetitive effect or present cross-subsidization issues because, in such transactions, ownership control over the assets will simply go from indirect to direct. EEI also notes that in reorganizations in which only one of the transacting entities survives the transaction, such as a merger or consolidation, ownership of jurisdictional assets by the surviving entity is assumed by law.

36. EEI maintains that the Commission's concern over the transfer of assets in a reorganization applies not to internal corporate reorganizations of non-traditional utilities in the form of mergers and consolidations, but to the contrasting type of reorganization where

[32] For example, the Commodities Futures Trading Commission, defines bona fide hedging transactions in its regulations. 17 CFR 1.3(z). The Internal Revenue Service defines a qualified hedging transaction in its regulations. 26 CFR 1.988–5. The Financial Accounting Standards Board, the New York Mercantile Exchange, and the Chicago Mercantile Exchange all have policies concerning and defining hedging.

[33] Order No. 708, FERC Stats & Regs. ¶ 31,265 at P 33.

[34] *Id.*

[35] The reporting requirements under 18 CFR 33.1(c)(9)(iv) and 18 CFR 33.1(c)(10)(i) require the parent holding company to file within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding share, irrespective of the capacity in which they were held.

[36] Order No. 669–A at P 83.

[37] Supplemental Policy Statement at P 38.

assets are transferred from one affiliate to another and both legal entities survive the transfer. EEI argues that if 18 CFR 33.1(c)(6) (authorization of internal reorganization not affecting a traditional public utility) were not interpreted so as to authorize the mergers of EWGs and other public utilities that do not have franchised territories simply because jurisdictional assets were transferred by operation of law in such mergers, there would be no practical distinction in the way the two types of reorganizations are treated under the 18 CFR 33.1(c)(6) blanket authorization.

Commission Determination

37. We grant EEI's request for clarification that the blanket authorization in 18 CFR 33.1(c)(6) applies to transactions involving the transfer of assets from one non-traditional utility subsidiary (*i.e.*, a public utility that does not have captive customers and does not own or control transmission facilities) to another non-traditional utility subsidiary when only one of the two non-traditional utility subsidiaries survives the transaction. We find that such a transaction will be consistent with the public interest and not entail cross-subsidization issues. Such a transaction would have no adverse effect on competition because market power is analyzed by the corporate family on an aggregate basis rather than on an individual corporate subsidiary basis (*e.g.*, the transfer of the ownership of a generator between wholly-owned subsidiaries has no effect on the potential market power of the parent corporation). Such a transaction would also have no adverse effect on rates, regulation, or inappropriate cross-subsidization because the participants in the transaction neither have captive customers nor own or control transmission facilities.

IV. Information Collection Statement

38. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[38] The Final Rule's information collections were approved under OMB control no. 1902–0082. While this rule clarifies aspects of the existing information collection requirements, it does not add to these requirements. Accordingly, a copy of this Final Rule will be sent to OMB for informational purposes only.

V. Document Availability

39. 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.

40. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

41. User assistance is available for eLibrary and 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.*

VI. Effective Date

42. These revisions in this order on rehearing are effective August 25, 2008.

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends Part 33, Chapter I, Title 18, *Code of Federal Regulations,* to read as follows:

PART 33–APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

■ 1. The authority citation for part 33 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; Pub. L. 109–58, 119 Stat. 594.

■ 2. In 33.1, paragraph (c)(12) is revised and paragraph (c)(16) is added to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

* * * * *

(c) * * *

(12) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to:

(i) any holding company granted blanket authorizations in paragraph (c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility; or

(ii) any person other than a holding company if, after the transfer, such person and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility.

* * * * *

(16) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the contract does not convey control over the operation of a generation or transmission facility, and the acquirer is a public utility.

[FR Doc. E8–16869 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

[38] 5 CFR 1320.12.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM07–15–001; Order No. 707–A]

Cross-Subsidization Restrictions on Affiliate Transactions

Issued July 17, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing and clarification, in part, of a final rule amending its regulations to codify restrictions on affiliate transactions between franchised public utilities that have captive customers, or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates.

DATES: *Effective Date:* This Final Rule; order on rehearing will become effective August 25, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Urquhart (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8496,

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Valerie Gill (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8527,
Stuart Fischer (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8517.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Cross-Subsidization Restrictions on Affiliate; Docket No. Transactions RM07–15–001:

Order on Rehearing

Order No. 707–A

Issued July 17, 2008.

1. Order No. 707 [1] amended the Federal Energy Regulatory Commission's (Commission) regulations to codify restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates. These restrictions supplemented other restrictions the Commission has in place that apply to public utilities with market-based rates and to public utilities seeking merger approvals. In this order, we deny, in part, and grant, in part, the various requests for rehearing received by the Commission, and amend part 35 of our regulations accordingly.

I. Background

2. In the Affiliate Transactions Notice of Proposed Rulemaking, the Commission proposed to implement uniform affiliate restrictions that would be applicable to all franchised public utilities with captive customers and their market-regulated and non-utility affiliates and would address both power and non-power goods and services transactions between the utility and its affiliates.[2] The proposed restrictions were based on those already imposed by the Commission in the context of certain section 203 and 205 approvals, but expanded the transactions and entities to which they apply.

3. *Specifically, the Commission proposed to:* (1) Require the Commission's approval of all wholesale power sales between a franchised public utility with captive customers and a market-regulated power sales affiliate; (2) require a franchised public utility with captive customers to provide non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate at a price that is the higher of cost or market price; (3) prohibit a franchised public utility with captive customers from purchasing non-power goods or services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market price (with the exception of (4)); and (4) prohibit a franchised public utility with captive customers from receiving non-power goods and services from a centralized service company at a price above cost.

4. The Commission stated that the restrictions would help it to meet the requirement of amended section 203(a)(4) of the Federal Power Act (FPA) [3] that a transaction not result in the inappropriate cross-subsidization of a non-utility associate company. The Commission further stated that the restrictions would help assure just and reasonable rates and the protection of captive customers for all public utilities pursuant to sections 205 and 206 of the FPA,[4] irrespective of whether they needed approval of a section 203 transaction.

5. As the Commission stated in Order No. 707, its obligation to ensure that the rates, terms, and conditions of jurisdictional service are just, reasonable and not unduly discriminatory or preferential requires that it ensure that wholesale rates do not reflect costs that result from undue preferences granted to affiliates or that are imprudent or unreasonable as a result of affiliate transactions. The Commission described its long history of scrutinizing affiliate transactions for potential cross-subsidization and how in recent rulemakings and orders it has codified and expanded affiliate restrictions, both under its FPA section 205 and 206 rate authority (in the context of market-based rates) and under its FPA section 203 merger authority. The Commission then extended similar restrictions to all franchised public utilities that have captive customers, or that own or provide transmission service over jurisdictional transmission facilities.

In particular, the Commission articulated restrictions on affiliate sales of electric energy by prohibiting wholesale sales of electric energy between a franchised public utility with captive customers and a market-regulated power sales affiliate without prior Commission authorization for the transaction under section 205 of the Federal Power Act.[5] The Commission also promulgated three pricing restrictions on the sale of non-power goods and services.

6. First, the Commission provided that unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.

7. Second, the Commission provided that unless otherwise permitted by Commission rule or order, a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

8. Third, and as an exception to the restriction set forth immediately above, the Commission provided that a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost.[6]

9. The Commission also stated in Order No. 707 that the pricing rules would be prospective and would apply to any contracts, agreements or arrangements entered into on or after the effective date of the rule. The Commission explained that to the extent different pricing was in effect for any contract, agreement, or arrangement entered into prior to the effective date of Order No. 707, that pricing may

[1] *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 73 FR 11013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264, *granting extension of time*, 122 FERC ¶ 61,280 (2008).

[2] *Cross-Subsidization Restrictions on Affiliate Transactions*, Notice of Proposed Rulemaking, 72 FR 41644 (July 31, 2007), FERC Stats. & Regs. ¶ 32,618 (2007).

[3] 16 U.S.C. 824b(a)(4).

[4] 16 U.S.C. 824d, 824e.

[5] 18 CFR 35.44(a).

[6] *Id.*

remain in effect, but the Commission may on its own motion, or upon complaint, institute a section 206 proceeding to determine whether the costs incurred by a public utility under pre-existing contracts, agreements or arrangements are just, reasonable and not unduly discriminatory or preferential.

II. Discussion

A. Affiliate Transaction Pricing Standards

10. In Order No. 707, the Commission denied requests to permit franchised public utilities with captive customers to make sales of non-power goods and services at cost to market-regulated power sales affiliates or non-utility affiliates and instead required these sales to be at the higher of cost or market price. It reasoned that to adopt an at-cost pricing structure for these types of non-power transactions ''would require a franchised public utility to sell to an affiliate at cost even when market prices are higher, thereby foregoing profits that the utility otherwise could have obtained by selling to a non-affiliate at a market price.'' [7]

11. The Commission also prohibited a franchised public utility with captive customers from purchasing non-power goods or services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market price, with the exception of purchases from centralized service companies. In doing so, the Commission denied the New York State Public Service Commission's (New York Commission) request for a lower of cost or market standard for these types of transactions, finding that captive customers are not harmed by the franchised public utility paying above-cost charges if those charges are no higher than what they would pay non-affiliates for the same non-power goods and services. In this regard, the Commission noted that nothing in the standard requiring that these purchases not be above market prevents the franchised public utility from paying less than the market price.[8] The Commission further rejected requests that it defer to state utility commissions that apply different standards to intra-system transactions to avoid inconsistent standards.[9]

1. Shared Corporate General Management and Administrative Services

Requests for Rehearing or Clarification

12. Florida Power & Light Company and FPL Energy, LLC (FPL), Pacific Gas & Electric Company (PG&E), and Southern California Edison Company (SoCal Edison) each argue that Order No. 707 does not adequately address pricing for shared corporate general management and administrative services that a utility provides to other companies in a single-state holding company system without a centralized service company but that it does not offer to non-affiliates. The services in question are those akin to the services that a centralized service company provides in multi-state systems. PG&E identifies them as accounting, appraisal, call center, claims, computer, construction, communications, equipment, fleet, janitorial, legal, legislative, maintenance, payroll, personnel, realty, regulatory, supply, and technical services. FPL notes that the services in question are similar to those provided by a centralized service company, which the Commission has defined as one ''that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system.'' [10] FPL states that in its system, the services in question are information technology and management; corporate communications systems; engineering and construction; [11] finance and accounting; legal; human resources; auditing; environmental services; risk management; technical nuclear and power generation support services; and federal government affairs. FPL, PG&E and SoCal Edison maintain that intra-system sales of these services at cost should be permitted even when the system has no centralized service company.

13. FPL, PG&E and SoCal Edison first note that they do not make sales of these services to non-affiliates, and as a result market prices do not exist for them. SoCal Edison notes that the Commission acknowledged in Order No. 707 that it has recognized that defining a market price for these services is a ''speculative task'' when dealing with a centralized service company, but the Commission fails to recognize that the task is no less speculative where the system does not have a centralized service company. FPL states that many of the services at issue vary from location to location and provider to provider. In a system like its own, these services have been provided in-house for years, and the nature of the services as well as the manner in which they are provided reflect both the culture and technology choices made by the utility providing these services. Because the nature of a service is driven and structured primarily to meet the needs of the franchised public utility, it is virtually impossible to establish a market or a market price for it.

14. SoCal Edison challenges the reasoning underlying the Commission's denial of at-cost pricing for general administrative services a franchised public utility provides to system companies, *i.e.*, that this pricing standard would require a franchised public utility to sell to an affiliate at cost even when market prices are higher, thereby foregoing profits that the utility otherwise could have obtained by selling to a non-affiliate at a market price. SoCal Edison argues that where the utility is not making any market-based sales of these services, it is not ''foregoing'' any profits. It suggests that there is no evidence in the record for the Commission's assumption that utilities would forego profits if the Commission did not adopt a higher of cost or market standard, and thus, no basis for the Commission's rejection of an at-cost pricing structure. SoCal Edison contends that the Commission should acknowledge the distinction between goods and services developed for sale on the open market (for which affiliates should be charged the higher of cost or market price) and those services that are not intended for sale and can be provided to affiliates at their fully-loaded cost.[12]

15. FPL, PG&E and SoCal Edison argue that at-cost pricing in these circumstances (*i.e.*, where the franchised public utility is a member of a single-state holding company and provides services only to affiliates, but not on the open market, and operates in a single-state context) leads to significant economies of scale. SoCal Edison states that while Order No. 707

[7] Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 70.

[8] *Id.* P 71.

[9] *Id.* P 74.

[10] The language cited is drawn from the definition of a centralized service company found in 18 CFR 367.1(a)(7).

[11] FPL notes that in its case ''engineering and construction'' services do not refer to the intra-corporate provision of parts or labor. It refers rather to oversight and planning functions effectively as an owner's representative. Actual engineering and construction services with respect to new plants are provided by third-party engineering and construction companies at negotiated rates.

[12] SoCal Edison states that fully-loaded costs include the direct cost of each employee's time plus adders to cover indirect costs such as employee benefits and other overhead items.

recognizes the efficiencies and economies of scale that benefit captive customers when general administrative services are provided across an enterprise, instead of being duplicated by each separate entity within a holding company structure, the order fails to recognize similar efficiencies and economies of scale in a single-state context where the corporate structure does not include a formal centralized services company, but where a franchised utility often may provide similar in-house corporate administrative services to the rest of the corporate enterprise.

16. PG&E argues that at-cost provision of goods and services promotes economies of scale, and as long as the non-utility companies within a family are not charging more than the cost of the services, and the utilities involved are recovering their costs of providing any services they provide to others within the family, utility ratepayers will receive the cost advantages of the economies of scale from in-house services and will be insulated from cross subsidizing other companies and their customers.

17. FPL argues that customers will lose the benefit of established efficiencies, expertise, and economies of scale, with no real countervailing benefit if at-cost pricing cannot be used in these circumstances. FP&L asks the Commission to clarify that when companies in a holding company system supply to each other non-power goods or services comparable to those provided by a centralized service company, then those non-power goods and services may be provided at fully-loaded cost as a reasonable proxy for market price. FPL argues that a fully-loaded cost standard has avoided the time and expense of formal requests for proposal procedures to ''market test'' in theory every provision of regularized and ongoing support services. An at-cost standard allows immediate use of shared corporate technical expertise in the most efficient and cost-effective manner.

18. These commenters also argue that customers of franchised public utilities are protected from affiliate abuse when general administrative services are shared at their fully-loaded costs, *i.e.*, costs designed to reflect the total corporate costs of providing a service. FP&L states that fully-loaded cost reflects the total cost to provide a particular service, including corporate overhead and other general expenses.[13] Edison Electric Institute (EEI) argues that there should at least be a strong presumption that the at-cost standard is appropriate when dealing with services of this type, barring a Commission or ratepayer concern, which can be explored on a case-by-case basis. It states that otherwise the new rules could be read to preclude even utility-to-centralized service company provision of such services at cost, requiring the services to be priced higher than at cost by one utility to the detriment of the customers of another utility that is a client of the centralized service company.

19. SoCal Edison states that when affiliates are charged fully-loaded cost for such services, the ability to leverage these services and gain economies of scale ultimately benefits the utility's customers.

20. EEI states that there is an array of services that companies within the family can provide to one another at a substantial savings because of economies of scale and by keeping the services in-house rather than having to obtain the services in the market, where additional overhead and rates of return must be covered. EEI argues that the at-cost provisions of Order No. 707 should apply broadly to companies within a family of companies that provide services to each other of the type provided by centralized service companies, even where the system does not have a formal centralized service company. EEI states that there should be no distinction between utility and non-utility affiliates to this extent. It maintains that a market price standard should apply only in cases where the seller makes external sales of these non-power services.

21. EEI and PG&E also argue that the Commission has failed to address or to resolve the potential for conflict between the Commission's rules and state affiliate transaction and cross subsidy requirements that may apply to the same transactions.[14] EEI argues that many states already have affiliate transaction provisions in place, and those provisions are specifically aimed at protecting captive retail customers. It maintains that the Commission should more fully accommodate the state provisions in this instance, as the Commission's final rule is aimed at protecting the same customers that state requirements seek to protect. EEI and PG&E argue that the states have a special interest in, and responsibility for, overseeing costs affecting these customers, and states have been fulfilling that role for many years.

22. PG&E argues that the Commission should defer to state reviews and approvals of affiliate transactions in order to avoid unnecessary conflict. It argues that the Commission's approach to affiliate transactions fails to address or to resolve the potential for conflict between Commission requirements and state affiliate transaction and cross subsidy requirements that may apply to the same transactions. PG&E argues that to avoid conflict, the Commission should grant a blanket waiver of the final rule's requirements applicable within any state that already oversees affiliate transactions to protect against cross-subsidization, and the waiver should apply to company operations covered by the state provisions. PG&E maintains that waivers of this type would be consistent with waivers the Commission has authorized for single-state utilities in Order No. 667. EEI supports these waivers also. National Grid argues that if the Commission does not defer to state regulation, it should provide a process for public utilities to get a waiver of the Commission's regulations' for certain transactions based on a showing that those transactions are already subject to adequate regulation at the state level.

Commission Determination

23. As discussed further below, we find the arguments in favor of permitting companies within a single-state holding company system that does not have a centralized service company to provide each other general administrative and management services at cost to be persuasive, and we will therefore grant rehearing on this

[13] FPL states that these expenses include (1) salaries, incentives, commissions, bonuses, rewards; (2) insurance; (3) paid time off such as vacation, etc., (4) FICA and miscellaneous taxes; (5) retirement planning/401k; (6) office infrastructure (office space, furniture, utilities); (7) office equipment (computer, software, FAX, Printer, UPS, Copier, etc.); (8) telecom & internet; (9) operational/functional management and oversight; (10) human resources and administration; (11) finance and payroll; (12) miscellaneous fringe and welfare benefits; (13) training and education; and (14) travel expenses. FP&L states that it organizes costs into three categories: (a) ''direct costs,'' *i.e.*, costs of resources used exclusively to provide services that are readily identifiable to an activity and used to indicate work that directly benefits a business unit other than the provider; (b) ''assigned costs'' or the costs of resources used jointly to provide both regulated and non-regulated activities that are apportioned using direct measures of cost causation; and (c) ''unattributable'' costs or costs of resources shared by both regulated and non-regulated activities for which no causal relationship exists. The costs in this final category are accumulated and allocated to both regulated and non-regulated activities using an affiliate management fee based on the ''Massachusetts Formula,'' which FPL says is a long-recognized regulatory methodology of cost allocation.

[14] National Grid USA (National Grid) makes a similar argument which we discuss separately below.

issue. Accordingly, we are revising our rules to permit affiliates within a single-state holding company system, as defined by our rules,[15] that does not have a centralized service company to provide ''at cost'' to other affiliates in the system the kinds of services typically provided by centralized service companies and the goods to support those services.[16] We stress that this permission applies only to internal general administrative and management services and only to services in that category that are not provided to unaffiliated third parties. While our grant of rehearing necessarily applies also to charges for a limited set of goods in the form of supplies and equipment acquired to support administrative and management functions, as well as office space and other general overhead items, we note in particular that it does not apply to inputs to utility operations such as fuel supply, construction, or real estate [17] that have a clearly identifiable market price,[18] nor does it apply to the implementation of major projects that are easily susceptible to competitive bidding, such as construction projects.

24. There are several reasons why the Commission has concluded that it is appropriate to expand the use of at-cost pricing beyond the context of centralized service companies to also allow at-cost pricing for the provision of general and administrative services and the goods to support those services between members of a single-state holding company system where those members do not sell such goods or services to non-affiliates. First, as we stated in Order No. 707 with respect to the same types of services being provided by centralized service companies in multi-state systems, defining a market price for general and administrative services is a speculative task.[19] The task is no more speculative in the context of a multi-state holding company with a centralized service company than in the context of a single-state holding company without a centralized service company. Thus, we agree that, when dealing with general administrative and management services, as a general matter the critical issue is the type of service involved, not whether it is supplied through a centralized service company or through a different type of system company.

25. Second, SoCal Edison points to our statement in Order No. 707 that at-cost pricing ''would require a franchised public utility to sell to an affiliate at cost even when market prices are higher, thereby foregoing profits that the utility otherwise could have obtained by selling to a non-affiliate at a market price.'' [20] We recognize that this statement concerning foregone profits does not apply where the utility does not provide those goods or services to non-affiliates. We therefore agree with SoCal Edison that where a utility is not making sales of a service to a non-affiliate, it cannot be said with certainty to be foregoing any profit.

26. Third, we recognize that efficiencies and economies of scale associated with providing these types of services and the goods to support those services between members within the single-state holding company system can benefit captive customers because the goods and services often can be provided less expensively, at cost, than if they were purchased from outside the system by individual system members. As a related matter, we do not believe it would serve the public interest to have rules that create an incentive for a single-state holding company to incur additional costs to set up a separate centralized service company (that would be allowed to use the at-cost pricing) to provide the very same services and the goods to support those services that could be provided more inexpensively, *e.g.*, through the investor-owned utility, without a centralized service company. While we believe that centralized service companies can facilitate regulatory oversight and generally favor their use, we also recognize that they may not be the most efficient or least-cost structure for some holding companies.

27. Finally, we give weight to the fact that where services are provided within a single-state holding company context, there may be greater state regulatory authority to oversee these types of services transactions and the goods to support those services than in the multi-state context, and this state oversight will serve to complement that of the Commission in protecting customers against inappropriate cross-subsidization. We recognize that one of the risks of at-cost pricing is the potential for prices to be imposed that are substantially higher than the market price.[21] As we stated in Order Nos. 667 and 707, the Commission will entertain complaints that at-cost pricing exceeds the market price.

28. We recognize that many of the above considerations would also apply to general and administrative goods and services provided between members in multi-state holding companies that do not have centralized service companies. However, we are reluctant to grant a broad generic exception for those circumstances. The detailed accounting and reporting requirements applicable to centralized service companies greatly assists the Commission in regulating those entities in a multi-state context where individual states may have less authority to help oversee affiliate transactions. We are willing, however, to consider requests for waiver on a case-by-case basis for at-cost pricing in the multi-state context, under the same circumstances as for single state holding companies (i.e., only for general and administrative services and the goods to support those services and only where members of the holding company do not sell such goods and services outside the holding company).[22] This will allow the Commission to examine each situation to ensure that adequate regulatory oversight and protections are in place. The Commission acknowledges that many of the arrangements for the intrasystem sharing of administrative and management services under discussion here are long standing and, in part, have developed in response to state regulatory requirements. The Commission agrees with EEI, PG&E and others that the states have a special interest in these matters, and, as discussed above, that it is appropriate to take into account such state regulation in developing our policies in this area. Accordingly, the existence of state oversight and the desire to avoid conflict with state requirements is an important consideration in granting

[15] 18 CFR 366.3(c)(1) (defining a single-state holding company as a holding company that derives no more than 13 percent of its public-utility company revenues from outside a single state). The definition exempts revenues derived from exempt wholesale generators, foreign utility companies, and qualifying facilities for these purposes.

[16] Section 367.1(a)(7) of the Commission's regulations defines a centralized service company as ''a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system.'' This definition also states that ''[c]entralized service companies are different from other service companies that only provide a discrete good or service.''

[17] *See* Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 62 n.57.

[18] We discuss the issue of fuel adjustment clauses further below.

[19] Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 72.

[20] *Id.* P 70.

[21] See Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 73.

[22] We do not anticipate that there would be very many multi-state holding companies in this category since most, if not all, of the current multi-state holding companies are former registered holding companies under the Public Utility Holding Company Act of 1935 that had centralized services companies and still have them.

rehearing and revising our rules as described above and in our willingness to consider case-by-case exceptions involving general and administrative services and the goods to support those services provided in the multi-state context. We do not want to require significant changes to settled practices when these practices are already subject to state oversight and where there is no showing that suggests these practices are leading to improper cross-subsidization. We believe that our grant of rehearing eliminates the potential for conflict between the Commission's rules and state affiliate transaction and cross subsidy requirements that may apply to the same transactions involving general and administrative services and the goods to support those services in a single-state holding company system. However, to the extent that any conflicts do arise, companies or state regulatory authorities may bring this to our attention on a case-by-case basis, and we will determine whether case-specific waivers are appropriate.

29. Commenters have described procedures they use to ensure that customers of franchised public utilities are protected from affiliate abuse when general administrative and management services are shared among system companies. Our grant of rehearing is premised on the assumption that the at-cost sharing of general administrative and management services in single-state holding company systems will be conducted using rigorous accounting and cost-allocation procedures. It is also premised on the assumption that the at-cost standard will be applied in conjunction with measures for the fair and reasonable allocation of costs across system companies. In granting rehearing, we note that when at-cost principles are applied (whether in the context of multi-state holding companies or in the context of single-state holding company systems), the Commission historically has acted, and will continue to act, under sections 205 and 206, whether on an application, a complaint, or on our own motion, to ensure that inappropriate costs are not flowed through in jurisdictional rates.

30. Accordingly, we will amend our regulations to provide that a company in a single-state holding company system, as defined in 18 CFR 366.3(c)(1), may provide general administrative and management non-power goods and services to, or receive such goods and services from, other companies in the same holding company system, at cost, provided that the only parties to transactions involving these non-power goods and services are affiliate or associate companies, as defined in 18 CFR 366.1, of a holding company in the holding company system.

31. We deny FPL's request for clarification that fully-loaded cost is a reasonable proxy for market price. First of all, we see no need to do so in light of our grant of rehearing above. Secondly, making fully-loaded cost a proxy for market price unnecessarily clouds the distinction between at-cost and market pricing embodied in our rules.

2. Pricing Standards for Particular Affiliate Arrangements Requests for Rehearing or Clarification

32. A number of requests for rehearing or clarification relate to the treatment of specific transactions or arrangements under our rules.

33. PG&E argues that a ''no higher than the market price'' standard is inoperable for certain types of entities. It refers specifically to bankruptcy-remote special-purpose entities used to raise funds through a securitized financing. PG&E states that these entities are structured to operate independently and at arm's length from their parent so that their assets and liabilities would not be consolidated with those of the parent in the event of the parent's or utility's bankruptcy. PG&E argues that this approach lowers the cost of utility financing, but that the special-purpose entities must be fully reimbursed for their costs in order to secure a legal opinion in support of their bankruptcy remote status. PG&E also believes that the use of special-purpose entities to obtain accounts receivable financing might be inconsistent with the Commission's rules. These entities also must be able to recover their costs fully.

34. Two holding companies with franchised public utility operations in more than one state seek clarification or rehearing on transactions specific to their individual operations. Xcel Energy Services Inc. (Xcel) argues that Order No. 707 does not expressly deal with the pricing for transactions between franchised public utilities. It states that its franchised operating companies entered into an umbrella agreement in 2000 that allows for incidental transactions in goods and services between the operating companies, such as short-term leases of coal rail cars done at cost. Xcel states that this at-cost arrangement was consistent with that at-cost principle mandated by the Securities and Exchange Commission (SEC) at the time. Xcel requests that its operating companies be allowed to continue these incidental transactions.

35. Xcel and National Grid each argue that certain transactions between their respective franchised public utilities that are accomplished through their respective centralized service companies should be subject to at-cost principles. Xcel notes that the Commission's regulations do not account for non-power goods and services that a utility operating company provides to its centralized service company and whose costs may then be re-allocated to other franchised public utility operating companies. Xcel states that its franchised public utilities share certain information system assets in this way at cost and were permitted to do so at cost by the SEC. Xcel seeks clarification that it and its operating companies may request a waiver from the Order No. 707 rules to continue at-cost arrangements like this that pre-date EPAct 2005 and Order No. 707.

36. National Grid argues that in Order No. 707 the Commission mischaracterized its comments as supporting at-cost pricing for all transactions among affiliates within a holding company system. National Grid states that it only proposed symmetrical pricing between franchised public utilities and centralized service companies—meaning all transactions involving centralized service companies would be priced at cost, no matter their direction. It contends that this pricing structure would comply with the affiliate rules included in the New York Commission's order on the merger between National Grid and Keyspan.

37. National Grid argues that the same rationale for justifying at-cost pricing for centralized service companies selling non-power goods and services to a franchised public utility should apply when a franchised public utility sells non-power goods and services to the centralized service company, *i.e.*, economies of scale, difficulty defining market value, and the Commission's authority to find at-cost pricing unreasonable in specific instances. National Grid states that the Commission's decision to treat centralized service companies like other non-utility affiliates when purchasing goods or services from a utility affiliate creates accounting requirements that are much more difficult to implement than symmetrical pricing.

38. National Grid maintains that while the Commission stated in Order No. 707 that ''stricter'' state standards would apply to affiliate transactions, the Commission's approach involves a narrow reading of that term that focuses entirely on price levels.[23] National Grid

[23] In Order No. 707, the Commission stated that ''to the extent a state has affiliate-pricing standards

Continued

argues that a state's restrictions on affiliate transactions may be considered highly strict if they require all transactions involving regulated affiliates to be settled at fully-loaded cost. National Grid states that its operations currently are subject to strict at-cost requirements at the state level that apply to all companies deemed regulated, which includes service companies. It argues that inserting Commission price standards into this situation will upset arrangements made at the state level in merger proceedings and rate cases. National Grid thus maintains that applying the Commission's rules to transactions among regulated affiliates will depend on how the term ''strict'' is to be interpreted in this context.

39. National Grid proposes that, because of the special status of centralized service companies, it may be preferable to distinguish between regulated and non-regulated companies rather than between utilities and non-utilities, in that centralized service companies are regulated at both the state and federal levels. National Grid maintains that this would be consistent with the Commission's position that its policies should not preempt state rules.

40. FirstEnergy Service Company (FirstEnergy) argues that the Commission should clarify that public utilities subject to regulation under Order No. 707 are free to request a waiver of one or more, but not all, of the Order No. 707 affiliate cross-subsidization restrictions. It maintains that this clarification will provide additional certainty when determining how best to comply with Commission regulation of affiliate cross-subsidization restrictions.

Commission Determination

41. The Commission will defer responding to the issues raised by PG&E with respect to the implications of our affiliate pricing rules for special-purpose entities created for financing purposes, such as bankruptcy-remote entities. It appears from PG&E's brief discussion that this is a generic issue and that there may be a lack of clarity with respect to whether the Commission considers bankruptcy-remote entities to be providing ''services'' covered by the Order No. 707 pricing restrictions. Accordingly, consistent with our goals of trying to clarify areas of confusion with respect to our regulations and providing greater regulatory certainty to the regulated community where possible, the Commission intends to obtain additional input from industry and others regarding the activities of bankruptcy-remote entities and their relationship to franchised public utilities, and thereafter to issue a guidance order with respect to whether the Commission considers these entities to be providing services covered by the rule and any related issues. In the interest of finalizing this rule, however, we will undertake such inquiries outside the context of this particular rulemaking.

42. With respect to Xcel and National Grid's concerns, we will address on a case-by-case basis issues regarding transactions between affiliated franchised public utilities or between franchised public utilities that include intermediate transactions with centralized service companies. First, we will consider whether pricing or other restrictions need to be imposed on transactions between two or more franchised public utilities on a case-by-case basis. Such transactions are not covered by this rule, which applies only to transactions between franchised public utilities and either a market-regulated power sales affiliate or a non-utility affiliate.[24] Second, to the extent that the requirements of this rule may be implicated because transactions for goods and services between franchised public utilities include intermediate transactions with a centralized service company, we clarify in response to National Grid and Xcel that a holding company and its operating companies may seek a waiver of the requirements of this rule on a case-by-case basis.

43. In response to FirstEnergy, we clarify that public utilities subject to regulation under Order No. 707 are free to request a waiver of the Order No. 707 affiliate cross-subsidization restrictions.

3. Materiality Threshold

Request for Rehearing or Clarification

44. EEI argues that, to avoid imposing an inappropriate burden while achieving the Commission's policy and regulatory goals, Order No. 707 should incorporate materiality thresholds per class of transactions per provider of either $1 million or 1 percent of utility gross revenues, whichever is less, before the affiliate transaction preapproval and pricing requirements apply. It notes that the Commission recently proposed using thresholds in its notice of proposed rulemaking on FERC Form 1, 1–F, and 3–Q, and their use here will allow companies to avoid scrutinizing thousands of relatively minor transactions.

Commission Determination

45. We will deny EEI's request for a materiality threshold for the application of the Order No. 707 rules. While we agree in principle that a materiality threshold may be appropriate, EEI has not fully explained how its proposal would function when applied. In particular, EEI has not explained what it means by a ''class'' of transactions, and the degree to which the threshold would apply in practice appears to depend, in part, on how broadly or narrowly a category is drawn. However, it may be appropriate for the Commission to revisit this issue after gaining additional experience with these rules.

B. Relationship of Pricing Restrictions to Other Commission Regulations

46. A number of commenters argue that the rules adopted in Order No. 707 may conflict with other Commission regulations. We address each potential conflict raised by commenters.

1. PURPA Regulations

Request for Rehearing or Clarification

47. EEI argues that the power transaction restrictions implemented in Order No. 707 should not apply to mandatory purchase obligation sales from qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).[25] It maintains that prohibiting affiliate power sales that are not first approved under FPA section 205 [26] could, if taken literally, require pre-authorization for energy sales made by a QF with market-based rate authority to an affiliated utility with captive customers. EEI asserts that this could be the case even where the utility has a mandatory obligation under PURPA to purchase the energy. EEI believes that the Commission did not intend this result because there is no reason for additional review of sales

that are 'stricter' than the Commission's then the stricter standard applies, as long as there is no conflict in complying with both the state's pricing standard and this Commission's pricing standard.'' *Id.* P 74.

[24] Transactions involving only two or more franchised public utilities may raise a different type of cross-subsidization issue (involving whether the customers of one franchised public utility would be subsidized at the expense of the customers of the other franchised public utility). The Commission will address such issues on a case-by-case basis, as appropriate, in the context of a section 205 filing, a section 206 complaint, or a section 203 merger application.

[25] 16 U.S.C. 824a–3.

[26] 18 CFR 35.44(a) (''*Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act'').

under a mandatory purchase agreement that is subject to Commission review.

Commission Determination

48. The Commission agrees with EEI that it did not intend that the pre-authorization requirement in question would apply to QF sales under contracts based on a mandatory purchase obligation under PURPA where the QF has market-based rate authority. Accordingly, we clarify that the pre-authorization requirement does not apply to those sales.

2. Fuel Adjustment Clause Regulations

Request for Rehearing or Clarification

49. EEI argues that to avoid conflicts, the non-power transaction provisions in the regulations implemented by Order No. 707 should be amended to exclude fuel purchases covered by the Commission's fuel adjustment clause regulations at 18 CFR 35.14(a)(7). It asserts that the new requirement could be read to apply to a purchase subject to the fuel adjustment clause regulations regardless of prior approval of the fuel price by a regulatory body. The new § 35.44(b) applies a ''no higher than market'' ceiling to purchases of goods and services that may differ from fuel prices already authorized by a regulatory body and currently allowed for use under § 35.14(a)(7). EEI argues that if § 35.44(b) controls in such circumstances, it could require utility fuel subsidiaries to accept a lower price even if a higher price has been approved by a state regulatory body. EEI also argues that determining the market price for a specific, delivered fuel can be very difficult because differences in quality and transportation costs affect the price.

Commission Determination

50. The Commission clarifies that the regulations issued under Order No. 707 pertaining to sales of non-power goods and services do not apply to fuel purchases covered by the Commission's fuel adjustment clause regulations. Those regulations incorporate extensive oversight measures, including a provision that fuel charges by affiliated companies that do not appear to be reasonable may result in the suspension of the fuel adjustment clause or an investigation under FPA section 206. Accordingly, we will amend our regulations to exempt from our affiliate pricing restrictions transactions for fuel where the price of fuel from a company-owned or controlled source is found or presumed under 18 CFR 35.14 to be reasonable and includable in the adjustment clause.

3. Market-Based Rate Regulations

Requests for Rehearing

51. FirstEnergy notes that under Order No. 707, a public utility that received a waiver of the market-based rate affiliate restrictions based on a finding that it had no captive customers can be exempted from the new affiliate cross-subsidization restrictions by making an informational filing referencing that finding. FirstEnergy argues that there is no need to impose on public utilities that have received waivers of the market-based rate affiliate restrictions the additional burden of making an informational filing in order to avoid the application of duplicative Order No. 707 affiliate cross-subsidization restrictions.

52. FirstEnergy also notes that while the Commission may have waived a public utility's market-based rate affiliate restrictions, the Commission may not have made an express ''finding'' as to whether the relevant public utility served captive customers, and it is thus unclear whether those public utilities will be entitled to rely on the Commission's waiver of market-based rate affiliate restrictions for purposes of the Order No. 707 affiliate restrictions. FirstEnergy maintains that the difficulty will be compounded by the unlikelihood of a Commission order in response to the informational filing or some other confirmation that the Commission has accepted or approved that filing.

53. FirstEnergy argues that to the extent that affiliate cross-subsidization compliance issues arise, it will be unclear whether the Commission's market-based rate affiliate restrictions, Order No. 707's affiliate cross-subsidization restrictions, or both, apply to a given transaction and to what effect. FirstEnergy argues that the Commission should delete the new restriction on affiliate sales of electric energy and rely instead on its existing market-based rate affiliate regulations to govern relevant wholesale sales of electric energy at market-based rates. In the alternative, FirstEnergy requests that the Commission clarify the relation between these two requirements.

Commission Determination

54. We disagree with FirstEnergy that it is unnecessary to require public utilities that have received waivers of the market-based rate affiliate restrictions to make informational filings referencing that filing for purposes of the Order No. 707 regulations. The minimal burden this requirement might create does not outweigh the benefit in terms of administrative efficiency and transparency that would accrue to the industry and the Commission through this procedure.

55. FirstEnergy expresses general concerns about the effect a Commission waiver of a public utility's market-based rate affiliate restrictions would have for purposes of Order No. 707. As the Commission explained in Order No. 697, ''where a seller demonstrates and the Commission agrees that it has no captive customers, the affiliate restrictions will not apply.'' [27] We clarify that the informational filing with respect to Order No. 707 need only consist of a copy of, and a citation to, the Commission order finding that the public utility does not serve captive customers.[28] Further Commission action on the issue thus would be unnecessary, absent any change in the facts on which the Commission's finding was based. This clarification that the informational filing consists of a copy of, and a citation to, the Commission's finding should adequately address FirstEnergy's concern that there might be an instance in which the Commission has not made an express finding on whether the public utility serves captive customers.

56. The Commission denies FirstEnergy's requests to delete the new regulations and rely on existing pricing restrictions under its market-based rate regulations. FirstEnergy has misinterpreted the scope and applicability of the regulations adopted in Order No. 707. As the Commission stated in Order No. 707, the restrictions imposed there are prophylactic and based on restrictions already imposed by the Commission in the context of certain section 203 and 205 approvals, but expand the transactions and entities to which they apply. The Commission recognized a regulatory gap and acted to expand the range of entities and transactions to which those restrictions apply to ensure that captive customers of franchised public utilities do not inappropriately cross-subsidize the activities of non-utility affiliates.

4. Order No. 667 Requirements

Requests for Rehearing

57. FirstEnergy argues that Order No. 707 duplicates requirements set forth in the rules on Commission review of affiliate transactions and protection of

[27] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 FR 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at P 552 (2007), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697–A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268.

[28] The Commission does not intend to set these informational filings for notice and comment, or issue orders on them.

captive customers implemented in Order No. 667, which promulgates the Commission's regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005).[29] It maintains that this could result in confusion and uncertainty. It will, for example, be unclear whether the new Order No. 707 regulations, the existing Order No. 667 pricing policy, or both will apply to issues arising in connection with centralized service companies. FirstEnergy also argues that it is unclear whether the Commission's grant of waiver of the Order No. 707 regulations, including the regulation pertaining to service companies, would affect the regulatory requirements set forth in Order No. 667.

58. FirstEnergy argues that to prevent confusion, the Commission should delete centralized service company at-cost requirements set forth in Order No. 707 and rely instead on its existing pricing policy set forth in Order No. 667 to regulate transactions with centralized service companies. Any codification of pricing policy for centralized service companies should be done in the Commission's regulations under PUHCA 2005. In the alternative, FirstEnergy requests that the Commission clarify the relation between the policies set forth in Order No. 667 and the regulations issued under Order No. 707 expressly applicable to centralized service companies.

Commission Determination

59. We deny FirstEnergy's request that we delete centralized service company at-cost requirements set forth in Order No. 707 and rely instead on the existing pricing policy set forth in Order No. 667 to regulate transactions with centralized service companies. While the Commission discussed service company issues at length in Order No. 667 and Order No. 667–A, and stated that it would accept the use of an ''at-cost'' standard for centralized service company non-power goods and services, it did not codify the standard in the PUHCA 2005 requirements themselves. While the Commission's PUHCA 2005 regulations allow for Commission review of holding company system cost allocation for non-power goods and services, which is highly relevant to the general issue of cross-subsidization, those regulations do not codify affiliate pricing standards. Moreover, to the extent there is overlap between this rule and the pricing policy we announced in the preamble of Order No. 667 and Order No. 667–A, our regulations here are consistent because they apply the standard that was announced in Order No. 667. We therefore do not agree that Order No. 707 and Order No. 667 are inappropriately duplicative, and we do not see the potential for conflict to which FirstEnergy alludes.

C. Captive Customers

60. The regulations issued in Order No. 707 apply to franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities. These regulations define captive customers as any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.

Requests for Rehearing

61. EEI argues that Order No. 707 should not treat wholesale customers that purchase electricity under competitive conditions as ''captive customers.'' It states that the Commission's transmission open access rules generally provide competitive choice. EEI argues that given the widespread availability of choice at the wholesale level, it should be unusual for a wholesale customer to be captive and require the affiliate transaction pre-approval and pricing protections set out in Order No. 707. EEI states that while the Commission may want to allow individual wholesale customers to raise concerns in individual rate proceedings, it encourages the Commission not to treat all wholesale customers as presumptively captive, but instead to treat them as presumptively non-captive.

Commission Determination

62. We do not agree with EEI's request in this regard. As stated in Order No. 707 and Order 697–A, wholesale customers may have choice, but the Commission will ''err on the broad side of the definition of captive customers.''[30] As the Commission noted, although we are erring on the side of a broad definition of captive customers, we recognize that there may be circumstances where customers fall within our definition but nevertheless there are sufficient protections in place to protect such customers against any risk of harm from transactions between the franchised public utility and its affiliates. We noted that it is possible that wholesale customers with fixed rate contracts would be adequately protected, but we explained that we are not prepared at this time to generically exclude such customers from the definition of captive customers. Instead, we will allow franchised public utilities, on a case-by-case basis, to seek a waiver of the affiliate restrictions if they feel that adequate protections are in place to protect any customers that fall under the ''captive customer'' definition. We see no reason to change this approach.

D. Transmission Facilities

63. In Order No. 707, the Commission made its restrictions on non-power goods and services transactions applicable to franchised public utilities that own or provide transmission service over transmission facilities subject to the Commission's jurisdiction.

Requests for Rehearing

64. National Grid and EEI argue Order No. 707 should not apply to franchised public utility companies that do not have captive customers simply because the utility companies own or provide service over jurisdictional transmission facilities. They argue that this issue did not receive proper notice and the Commission did not sufficiently explain what EEI claims is a dramatic expansion in the scope of the rule that was not discussed in the proposed rule. They also argue that the Commission already has oversight of such companies under FPA sections 205 and 206, and the expansion is therefore unnecessary.

65. EEI encourages the Commission to delete the provision that makes the new regulations applicable to public utilities that do not have captive customers but simply own or provide service over jurisdictional transmission facilities. EEI asserts that if the Commission does not do this, it should discuss the reasons for not doing so and invite further public comment.

66. Similarly, EEI argues that franchised public utilities that have received a waiver of the market-based rate affiliate restrictions because they have no captive customers but that own, or provide service over, jurisdictional transmission facilities should not have to seek a waiver or make an informational filing to avoid Order No. 707 pricing restrictions. EEI states if a further waiver or informational filing is required, the Commission should clarify the showing required to secure a waiver

[29] Energy Policy Act of 2005, Public Law No. 109–58, secs. 1261 *et seq.*, 119 Stat. 594 (2005); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667–A, FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667–C, 118 FERC ¶ 61,133 (2007).

[30] Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 43; *see also* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 199.

or what the informational filing must contain.

Commission Determination

67. We deny EEI's request to delete the provision. As a preliminary matter, we disagree that there has been insufficient notice that these rules would apply to franchised public utility companies providing service over jurisdictional transmission facilities. While due process and the Administrative Procedure Act impose an obligation on agencies to provide adequate notice of issues to be considered,[31] that obligation is satisfied in this rulemaking by providing the terms or substance of the proposed rule and a description of the subjects and issues involved.[32] The coverage in Order No. 707 of franchised public utilities that provide service over jurisdictional transmission facilities was a logical outgrowth of the Affiliate Transactions Notice of Proposed Rulemaking and its purpose, *i.e.*, to expand the coverage of the affiliate restrictions established in the context of blanket market-based rate authorizations and our merger proceedings and to codify them in our regulations. Indeed, the American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA) specifically raised the issue in response to the Affiliate Transactions Notice of Proposed Rulemaking, arguing that the Commission should clarify the regulatory text in the final rule to ensure that, consistent with existing Commission affiliate cross-subsidization policy and the Commission's existing FPA section 203 and PUHCA 2005 regulations, the new generic cross-subsidization regulation explicitly protects transmission customers.[33] The Administrative Procedure Act ''does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule,'' and this is particularly true when proposals are adopted in response to comments from participants in the rulemaking proceeding.[34] Order No. 707 thus does not unduly change the scope of this proceeding. In any event, the parties' ability to seek rehearing resolves any due process issues.

68. Regarding the substance of the commenters' arguments, as noted in Order No. 707, some franchised public utilities do not have captive customers, but own or provide transmission service over jurisdictional transmission facilities,[35] and customers of such franchised public utilities are entitled to the same customer protection as those that are considered captive customers. Transmission customers should not have to bear the costs of inappropriate cross-subsidization. This provision was added to the Exhibit M requirement in Order No. 669–A, protecting customers of such franchised public utilities from cross-subsidization in the merger context. The addition of the language here allows for the continued protection of these customers beyond the confines of our decisions under FPA section 203. Finally, while we recognize that the Commission oversees transmission rates under sections 205 and 206, the affiliate pricing rules are preventative in nature, allowing for greater protection of such customers. Thus, in order to grant waiver of the Order No. 707 regulations, the Commission would need to be assured that the transmission customers of these franchised public utilities that do not have captive customers do not bear the costs of inappropriate cross-subsidization.

69. In response to EEI's request that we specify what further action would be required to obtain a waiver, the public utility would need to demonstrate that the transmission customers of a franchised public utility that does not have captive customers do not bear the costs of inappropriate cross-subsidization.

E. Reporting Requirements

70. In the Affiliate Transactions Notice of Proposed Rulemaking, the Commission asked whether it should adopt any after-the-fact reporting requirements for transactions covered by the proposed regulations. In Order No. 707, the Commission concluded that its current reporting regulations are adequate to ensure compliance with the new regulations. The Commission also noted that in addition to the information gathered through Form No. 1, it already collects affiliate power sales information from franchised public utilities through EQRs and market-based rate requirements. In addition, the Commission's existing record retention requirements in Parts 125 and 225 of its regulations already apply to transactions involving non-power goods and services.

Request for Rehearing

71. APPA and NRECA maintain that Order No. 707 inappropriately relies on existing record-retention requirements that do not mandate any reporting. APPA and NRECA note that Order No. 667 requires centralized service companies in holding company systems to file annual reports on FERC Form No. 60 that contain certain information on affiliate transactions. But they contend that neither Order No. 667 nor new Order No. 707 requires filings by single-purpose service companies or other associate companies. They argue that this leaves the Commission, state regulators, wholesale and transmission customers, and the public with a significant information gap when it comes to evaluating whether cross-subsidization is in fact occurring.

Commission Determination

72. The Commission continues to believe that no additional reporting requirements are necessary at this time. We note that the Commission's regulations already provide that, unless otherwise exempted or granted a waiver, every service company in a holding company system, including a special-purpose company (*e.g.*, a fuel supply company or a construction company), that does not file a FERC Form No. 60 must instead file a narrative description of the service company's functions during the prior calendar year.[36] Moreover, the Commission has a longstanding practice of relying on its section 205 and 206 ratemaking reviews to disallow passing non-power goods and services costs through jurisdictional rates if those costs are not just and reasonable or are inappropriately allocated. It relies on section 205 rate reviews and on its audit function to deter inappropriate allocation of costs. This is the longstanding, traditional approach to this issue and the reason why record retention requirements are important. There is no evidence that existing practices are not effective. Finally, given the potential scope of the information in question, the Commission is not prepared to impose new reporting requirements without a demonstrated need for such reporting and a record to support a finding that a reporting system would not create unnecessary burdens.

F. Grandfathered Agreements

73. The Commission clarified in Order No. 707 that the new pricing rules are prospective and will apply to any contracts, agreements or arrangements entered into on or after the effective date

[31] *Public Service Commission of the Commonwealth of Kentucky* v. *FERC*, 397 F.3d 1004 (DC Cir. 2005), *citing Williston Basin Interstate Pipeline Co.* v. *FERC*, 165 F.3d 54 (DC Cir. 1999); *see* 5 U.S.C. 554(b)(3).

[32] *See* 5 U.S.C. 553(b)(3).

[33] APPA/NRECA Sept. 6, 2007 Comment at 5–7.

[34] *Daniel Int'l Corp.* v. *OSHA*, 656 F.2d 925, 932 (4th Cir. 1981).

[35] Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 48.

[36] 18 CFR 366.23 (describing FERC–61).

of the order. To the extent different pricing was in effect for any contract, agreement or arrangement entered into prior to the effective date, the Commission stated it may remain in effect. But the Commission also stated that it could on its own motion, or upon complaint, institute a section 206 proceeding to determine in specific instances whether costs incurred by a public utility under grandfathered contracts, agreements or arrangements are just, reasonable and not unduly discriminatory or preferential.

Request for Rehearing

74. FPL asks the Commission to clarify that the Commission's position on this issue covers all existing arrangements where affiliates provide non-power goods and services equivalent to those that would be provided by a centralized service company. FPL argues that the Order No. 707 restrictions do not by their terms supersede the Order No. 697 restrictions on affiliate transactions, and the Commission should seek consistency in its regulations on these matters. FPL argues that the Commission should clarify that the grandfathering language in Order No. 707 also applies with respect to the requirements of Order No. 697 where existing inter-affiliate transactions involving non-power goods and services are comparable to those provided by a centralized service company.

75. APPA and NRECA contend that the new rules should be applied prospectively to all transactions occurring after the effective date of Order No. 707. They state that the Commission undermined the purpose and effect of Order No. 707 by generically exempting all affiliate transactions occurring under contracts, agreements, and arrangements made before the rule's effective date. They argue that this will permit transactions that violate the new regulations to continue for the entire term of a long-term affiliate contract, delaying the rule's effectiveness for years, in some cases. APPA and NRECA also maintain that a public utility otherwise covered by the new restrictions can move quickly to execute prior to the effective date a new long-term agreement with its affiliates that violates the new restrictions.

76. APPA and NRECA maintain that the Commission's sole justification for its action was that it would be unjust and detrimental to the financial integrity of holding companies to void pricing arrangements retroactively. APPA and NRECA argue that the Commission offered no evidence to support this claim, and this absence of evidence stands in contrast to the extensive and explicit justification of the need for pricing restrictions to protect the captive customers and transmission customers of public utilities. They thus argue that the Commission's action is arbitrary and capricious because the Commission failed to provide a rational connection between the facts found and the choice made.

77. APPA and NRECA maintain that grandfathering existing agreements violates the Commission's statutory mandate under section 206. They argue that, to the extent the Commission's position rests on a finding that pre-existing affiliate contacts are not ''unjust, unreasonable, unduly discriminatory or preferential,'' Order No. 707 does not support such a finding with any evidence, or explain how such a finding squares with the Commission's basic findings on the need for the new rules.

Commission Determination

78. In response to FPL's request that the Commission clarify that the grandfathering language in Order No. 707 also applies with respect to the requirements of Order No. 697, we do not believe that this proceeding is the proper place to address the requirements of Order No. 697. We note that Order No. 697 establishes its own procedures seeking waivers of its requirements. As the Commission stated in its order of March 25, 2008 in this docket, the Commission's grandfathering of preexisting contracts, agreements and arrangements was only for purposes of compliance with this rule.[37] The Commission noted that to the extent public utilities were required to comply with the same or similar pricing restrictions pursuant to a merger order or in conjunction with a market-based rate authorization, our action to make Order No. 707 compliance prospective only did not change any such obligations under other orders or rules. In other words, pricing restrictions imposed pursuant to a merger order, a market-based rate authorization order or the Commission's market-based rate rules are not within the scope of Order No. 707 and, consequently, the Order No. 707 grandfathering provision does not relieve a public utility of its obligations under other orders and rules with respect to contracts, agreements or arrangements entered into prior to March 31, 2008.

79. We disagree with APPA and NRECA that our new rules should be applied prospectively to all transactions (as opposed to all agreements) entered into after the effective date of Order No. 707. Many or most of the agreements in question were approved or sanctioned by the SEC and/or state commissions, and the Commission will not lightly modify previously approved contracts or arrangements. To the extent such action is appropriate, we will act pursuant to FPA section 206 on a case-by-case basis. We are not permitting improper cross-subsidization by permitting existing contracts to remain in effect. Issues that may arise under these contracts will always be subject to our authority under FPA section 206. We reject the claim that the continuing effect of these pre-existing contracts violates our mandate under section 206. Nothing in the new rules limits or qualifies our powers and duties under that section, and the Commission's position on preexisting agreements in no way rests on a generic finding that these agreements are not unjust, unreasonable, unduly discriminatory or preferential.

80. We also disagree that we are facilitating abuse by allowing companies to enter into potentially abusive contracts before the effective date of these regulations and that would remain in effect after the effective date. Our powers with respect to these contracts are no different than they are with respect to contracts that already exist. As we stated in Order No. 707, the Commission on its own motion, or upon complaint, may on a case-by-case basis institute a section 206 proceeding to determine whether the costs incurred by a public utility under such pre-existing contracts, agreements or arrangements are just, reasonable and not unduly discriminatory or preferential. As we further noted in Order No. 707, many public utilities already have the same pricing restrictions in effect as a result of Commission orders approving mergers or market-based rates; these restrictions remain in place.

III. Document Availability

81. 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

[37] *Cross-Subsidization Restrictions on Affiliate Transactions,* 122 FERC ¶ 61,280 at n.5 (2008).

Street, NE., Room 2A, Washington DC 20426.

82. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

83. 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.*

IV. Effective Date and Congressional Notification

84. Changes to Order No. 707 adopted in this order on rehearing will become effective August 25, 2008.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends part 35, Chapter I, Title 18, Code of Federal Regulations, to read as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.44 as follows:

■ A. Amend paragraph (a) to add a sentence at the end of the paragraph;

■ B. Revise paragraphs (b)(1) and (b)(2); and

■ C. Add paragraph (b)(4) and paragraph (c).

§ 35.44. Protections against affiliate cross-subsidization.

(a) * * * This requirement does not apply to energy sales from a qualifying facility, as defined by 18 CFR 292.101, made under market-based rate authority granted by the Commission.

(b) * * *

(b)(1) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(4) of this section, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraphs (b)(3) and (b)(4) of this section, a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

* * * * *

(4) A company in a single-state holding company system, as defined in § 366.3(c)(1) of this chapter, may provide general administrative and management non-power goods and services to, or receive such goods and services from, other companies in the same holding company system, at cost, provided that the only parties to transactions involving these non-power goods and services are affiliates or associate companies, as defined in § 366.1 of this chapter, of a holding company in the holding company system.

(c) *Exemption for price under fuel adjustment clause regulations.* Where the price of fuel from a company-owned or controlled source is found or presumed under § 35.14 to be reasonable and includable in the adjustment clause, transactions involving that fuel shall be exempt from the affiliate price restrictions in § 35.44(b).

[FR Doc. E8–16870 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9408]

RIN 1545–BD01

Dependent Child of Divorced or Separated Parents or Parents Who Live Apart; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9408) that were published in the **Federal Register** on Wednesday, July 2, 2008 (73 FR 37797), relating to a claim that a child is a dependent by parents who are divorced, legally separated under a decree of separate maintenance, or separated under a written separation agreement, or who live apart at all times during the last 6 months of the calendar year.

DATES: This correction is effective July 24, 2008, and is applicable to taxable years beginning after July 2, 2008.

FOR FURTHER INFORMATION CONTACT: Victoria Driscoll, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 152 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9408) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9408), which were the subject of FR Doc. E8–15044, is corrected as follows:

1. On page 37798, column 2, in the preamble, under the paragraph heading ''a. Custodial Parent's Failure To Release Exemption'', first paragraph, lines 8 thru 11, the language ''6 months of the taxable year, (2) the child was in the custody of one or both parents for more than one-half of the taxable year, and (3) the child received'' is corrected to read ''6 months of the calendar year, (2) the child was in the custody of one or both parents for more than one-half of the calendar year, and (3) the child received''.

2. On page 37798, column 3, in the preamble, under the paragraph heading ''a. Custodial Parent's Failure To Release Exemption'', first paragraph of the column, line 4, the language ''6 months of the taxable year, (2) the'' is corrected to read ''6 months of the calendar year, (2) the''.

LaNita Van Dyke,

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

[FR Doc. E8–16921 Filed 7–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 220

RIN 0596–AC49

National Environmental Policy Act Procedures

AGENCY: USDA Forest Service.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is moving the Forest Service's National Environmental Policy Act (NEPA) codifying procedures from Forest Service Manual (FSM) 1950 and Forest Service Handbook (FSH) 1909.15. In addition to codifying the procedures, the Department is clarifying and expanding them to incorporate Council on Environmental Quality (CEQ) guidance and to better align Forest Service NEPA procedures with its decision processes.

This rule gives Forest Service NEPA procedures more visibility, consistent with the transparent nature of the Forest Service's environmental analysis and decision making. Also, the additions to the Forest Service NEPA procedures in this rule are intended to provide an environmental analysis process that better fits with modern thinking on decisionmaking, collaboration, and adaptive management by describing a process for incremental alternative development and development of adaptive management alternatives. Maintaining Forest Service explanatory guidance in the FSH will facilitate timely responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field units when implementing the NEPA process.

DATES: *Effective Date:* These NEPA procedures are effective July 24, 2008.

ADDRESSES: The Forest Service NEPA procedures are set out in 36 CFR part 220, which is available electronically via the World Wide Web/Internet at *http://www.gpoaccess.gov/cfr/index.html*. Single paper copies are available by contacting Martha Twarkins, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104. Additional information and analysis can be found at *http://www.fs.fed.us/emc/nepa*.

FOR FURTHER INFORMATION CONTACT: Martha Twarkins, Ecosystem Management Staff, (202) 205–2935, Forest Service, USDA. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 require Federal agencies to adopt procedures as necessary to supplement the requirements of the CEQ's regulations implementing the National Environmental Policy Act (NEPA). The regulation further encourages agencies to publish agency explanatory guidance for CEQ's regulations and agency procedures. In 1979, the Forest Service chose to combine its implementing procedures and explanatory guidance in Forest Service directives FSM 1950 and FSH 1909.15.

Descriptions of Forest Service NEPA authority, objectives, policy, and responsibilities remain in FSM 1950. Forest Service explanatory guidance interpreting CEQ and Forest Service procedures in regulation remain in FSH 1909.15. For an explanation of NEPA and the NEPA process, see CEQ's ''A Citizen's Guide to the NEPA—Having Your Voice Heard'' at *http://ceq.eh.doe.gov/nepa/Citizens_Guide_Dec07.pdf.*

This rule gives Forest Service NEPA procedures more visibility, consistent with the transparent nature of the Forest Service's environmental analysis and decision making.

Maintaining Forest Service explanatory guidance in directives will facilitate quicker responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field units when implementing the NEPA process.

Since the last major update of Forest Service NEPA policy in 1992, CEQ has issued guidance that the Department believes is appropriate to incorporate into Forest Service NEPA procedures with this regulation. The Department also believes it is appropriate to incorporate several concepts that the Forest Service currently uses, but for which explicit provisions in its current procedures are lacking.

Finally, this rule will allow for better integration of NEPA procedures and documentation into the current Forest Service decisionmaking processes, including collaborative and incremental decisionmaking.

On August 16, 2007, the Forest Service published a proposed rule to move its NEPA procedures from FSH 1909.15 to 36 CFR part 220 (72 FR 45998). The majority of implementing procedures found in FSH 1909.15 transfer to 36 CFR part 220 and remain intact. Forest Service explanatory guidance remains in the revised FSH 1909.15 being published concurrently with this rule and available at *http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?1909.15*. Key changes in this final rule:

- Clarify actions subject to NEPA by summarizing the relevant CEQ regulations in one place.
- Recognize Forest Service obligations to take immediate emergency responses and emphasize the options available for subsequent proposals to address actions related to the emergency when normal NEPA processes are not possible.
- Incorporate CEQ guidance language regarding what past actions are ''relevant and useful'' to a cumulative effects analysis.
- Clarify that an alternative(s), including the proposed action, may be modified through an incremental process.
- Clarify that adaptive management strategies may be incorporated into an alternative(s), including the proposed action.
- Incorporate CEQ guidance that states environmental assessments (EAs) need to analyze alternatives to the proposed action if there are unresolved conflicts concerning alterative uses of available resources as specified by section 102(2)(E) of NEPA.

The CEQ was consulted on the proposed and final rule. CEQ has issued a letter stating CEQ has reviewed this rule and found it to be in conformity with NEPA and CEQ regulations (per 40 CFR 1507.3 and NEPA section 102(2)(B)). This letter is available at *http://www.fs.fed.us/emc/nepa*.

To improve clarity, this final rule received numerous corrections to punctuation, grammar, abbreviations, and citations. These edits did not change the substance or meaning of any of the rule's provisions. Substantive changes from the proposed to this final rule are discussed in the responses to comments that follow.

Comments on the Proposal

The proposed rule was published in the **Federal Register** on August 16, 2007, for a 60-day comment period. The Forest Service received 10,975 responses, consisting of letters, e-mails, web based submissions, and faxes. Of those, approximately 200 contained original substantive comments; the remaining responses were organized response campaign (form) letters. Comments were received from the public, from within the Forest Service,

and from other agencies. The Department considered all the comments and made a number of changes in response. A summary of comments received and the Department's responses follow.

General Comments

Generally, respondents favored the Forest Service's efforts to make the NEPA process run more efficiently for all interested parties. Many respondents like the idea of having Forest Service NEPA procedures in more readily accessible regulations, instead of in directives. They also like the concept that the Forest Service would like to work more closely with stakeholders. Respondents feel that the CFR is more readily available to the public, making it easier for the public and interested parties to engage the Forest Service during decisionmaking and to ensure they are following the regulations. In addition, many respondents feel that moving the NEPA procedures to regulation ensures they are part of the Federal Government's official regulations, enhancing the opportunities to legally enforce the requirements. Generally, most respondents support the proposed rule, but have concerns with some details, which are outlined below.

Response. The Forest Service appreciates the comments. It should be clarified however that the Forest Service believes that the move from internal procedures to published regulations and handbook should not change the judicial interpretations of these procedures.

NEPA

Comments. Although most respondents agree with moving NEPA procedures to regulation, some asked the question, ''What problem is the Forest Service trying to solve by moving its regulations?'' Also, a few respondents cite *Western Radio Services Co.* v. *Espy*, 79 F.2d 896, 901 (9th Cir. 1996), stating that the Forest Service must explain the rationale for moving NEPA procedures. Many respondents are concerned that the proposed rule would weaken or undermine NEPA, which in turn would damage public lands, water, wildlife, and air. One individual stated that only Congress has the authority to change NEPA.

Respondents are also concerned that the proposed rule would give special interest groups an opportunity to develop, extract, and log public lands without regulation or accountability to the general public. Many individuals commented about the proposed rule being ''another attempt by the current administration to circumvent environmental regulations.'' One conservation organization believes that ''the Forest Service 'decision process' * * * is highly subject to political pressure, particularly from the natural resource extraction industry, which views natural resources on Federal lands as theirs for the taking.''

Another individual views the proposal as ''the agency giving itself too much discretion to avoid implementing the Act, possibly undermining NEPA's purpose.''

Response. The Department is moving Forest Service procedures from internal directives to regulation to give its NEPA procedures more visibility, consistent with the transparent nature of the Forest Service's environmental analysis and decision making. The Forest Service procedures supplement the CEQ regulations and placing Forest Service NEPA procedures in regulation underscores their importance. The final rule incorporates existing Forest Service procedures and existing CEQ guidance. This final rule also incorporates existing Forest Service practices such as collaboration and adaptive management as options for the responsible official to use.

The Department does not interpret the Ninth Circuit's decision in *Western Radio Services Co.* v. *Espy* as requiring a rationale for moving NEPA procedures. That case was about compliance with special use permitting regulations; on the page cited by the commenters the Ninth Circuit held that directives did not have independent force and effect of law. For this rule, the Department provides its rationale for moving the procedures to regulation.

The Forest Service procedures supplement the CEQ and U.S. Department of Agriculture (USDA) regulations for implementing NEPA procedural provisions; they neither supplant nor diminish those requirements. This final rule states under section 220.1(b), ''This part supplements and does not lessen the applicability of the CEQ regulations, and is to be used in conjunction with the CEQ regulations and U.S. Department of Agriculture regulations at 7 CFR part 1b.'' The Department is not changing NEPA nor providing deference to one group over another. Groups for, against, or neutral on any proposed actions including logging have equal access to the Forest Service decision making process as described in sections 220.4(c), (d), and (e). Section 220.1(b) makes it explicitly clear that this final rule does not ''circumvent'' or ''avoid'' the Forest Service commitment to, and responsibility for, implementing NEPA.

Comments. Some respondents commented that the Forest Service needs to produce an environmental impact statement (EIS) for the proposed rule. In addition, respondents stated that the proposed rule constitutes revised agency rules and regulations and violates 40 CFR 1502.4(b), which highlights when an EIS must be prepared. CEQ regulation at 40 CFR 1502.4(b) states 'Environmental impact statements may be prepared, and are sometimes required, for broad federal actions such as the adoption of new agency programs or regulations (1508.18).' Some respondents feel that the NEPA procedures described in this rule should be characterized as the adoption of new agency regulations, thus requiring an EIS.

Response. CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency NEPA procedures. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the Agency's final determination of what level of NEPA analysis is required for a particular proposed action. As stated in the preamble to the proposed rule, ''The rule would not directly impact the environment.'' (72 FR 46002). The regulations do not authorize or prohibit any action or have any effect on the environment. The requirements for establishing agency NEPA procedures are set forth at 40 CFR parts 1505.1 and 1507.3. Additionally, the Forest Service NEPA procedures presented in this rule are established procedures described in the Forest Service directive system, allowed under the existing Forest Service procedures, or are existing CEQ guidance and are not considered new agency regulations.

Regulations establishing agency NEPA procedures do not require NEPA analysis and documentation. See, e.g., *Heartwood, Inc.* v. *U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Comments. Several individuals are concerned that moving the Forest Service's procedures to the CFR's could encourage other agencies to do the same, for example, the Bureau of Land Management. One individual is concerned that the proposed change would affect judicial interpretations of the Forest Service's NEPA obligations, therefore increasing the Forest Service's susceptibility to lawsuits.

Response. The majority of Federal agencies currently have their NEPA procedures in the CFR, and the Department believes it is appropriate to place the Forest Service's NEPA procedures in regulation. In addition, it will place the Forest Service's NEPA

procedures in one easily accessible place, incorporate current CEQ guidance and place the procedures in line with current Forest Service decision making. The Forest Service believes that the move from internal procedures to published regulations and handbook should not change the judicial interpretations of these procedures and therefore should not increase uncertainty due to litigation. As for whether a regulation would make the Forest Service more susceptible to lawsuits, the Forest Service has an obligation to comply with NEPA and the CEQ regulations whether these procedures are specified in regulations or internal procedures. Furthermore, if the Forest Service's application of the regulation is challenged in court, the Department believes that the courts will give appropriate deference to the CEQ's interpretation of NEPA, as embodied in these regulations.

Public Comment on Projects

Comments. Many respondents are concerned that the proposed rule would take away the public's ability to comment on projects. Individuals ask the Forest Service to not limit public comment.

Response. This final rule will not take away or limit the public's ability to comment on projects compared with current practice. The final rule supplements, but does not supercede the CEQ regulations, which contain public involvement requirements. Moreover, the final rule retains the proposed rule requirements for responsible officials to consider public and agency comments in decisionmaking and to include such comments and responses in the administrative record (section 220.4(c)).

Collaboration

Comments. Many respondents like the idea of collaboration and urge the Forest Service to involve the public as much as possible. One individual would like to see all agencies, States and local governments, organizations, and individuals included in the collaborative process identified in the NEPA documents, along with an indication of when they joined the process.

Some respondents recommend the Forest Service make collaboration an optional process and if collaboration is undertaken, a strict timeline should be imposed. One individual was concerned that the proposed changes would ''allow domination by whichever special interest group has the ear of those in authority.''

Respondents feel that the Forest Service should integrate collaboration and adaptive management into the existing NEPA framework rather than implementing new changes ''which lack the checks and balances NEPA provides.''

Response. Given the concerns regarding collaboration being within the regulation, the Department removed the references to collaboration that were in the proposed section 220.5(e)(1), which is now section 220.5(e)(2). The proposed language stated ''To facilitate collaborative processes and sound decisions, the responsible official may collaborate with interested parties to modify the proposed action and alternative(s) * * *.'' The proposed language was interpreted by many as providing that the incremental development and modification of alternatives may only be done when the Forest Service collaborates with the public or that collaboration may only be done in a process involving the incremental development and modification of alternatives. Neither collaboration nor the incremental development and modification of alternatives are required in every case, nor is one a prerequisite for the other.

Collaboration is a tool that enables the Forest Service to focus on issues that matter. The Department recognizes that collaboration may not be appropriate in every case (see CEQ publication, ''Collaboration in NEPA—*A Handbook for NEPA Practitioners*,'' available at *http://ceq.eh.doe.gov/nepa/nepapubs/Collaboration_in_NEPA_Oct2007.pdf*). The final rule does not set collaboration requirements, including timelines or documentation of when parties become involved in the process. Collaboration processes, like public involvement and scoping, will vary depending on the need and circumstances. Some situations will require a lot of time and others will not. Adaptive management is addressed in the final rule at section 220.5(e)(2).

Section 220.3 Definitions

Comments. Many respondents are concerned that the definition for ''reasonably foreseeable future actions,'' in section 220.3 is too narrow. They suggest the proposed rule definition could eliminate from consideration a large number of activities on National Forest System lands that are clearly foreseeable. Respondents believe that if the proposed rule is approved, the Forest Service would be ignoring the CEQ provision regarding ''reasonably foreseeable future actions.'' Of particular concern was the phrase ''activities not yet undertaken.''

Another concern was that the proposed rule suggests an improper focus on activities taking place primarily on NFS lands, and fails to include other agencies or private landowners with lands adjacent to NFS lands.

Response. The final rule defines ''reasonably foreseeable future actions'' to explain a term in CEQ's definition for ''cumulative impact'' at 40 CFR 1508.7. The CEQ definition of ''cumulative impact'' includes both Federal and non-Federal actions for consideration of cumulative effects, including reasonably foreseeable future actions. To clarify that Federal and non-Federal actions are to be considered, in the final rule the words ''Federal or non-Federal'' are added to the definition of ''Reasonably Foreseeable Future Actions.'' The phrase: ''activities not yet undertaken'' is to distinguish foreseeable actions from past and present actions and does not alter CEQ's regulatory definition for cumulative impact (See 40 CFR 1508.7). The CEQ definition for cumulative impact includes past and present actions. Ongoing activities such as grazing and oil and gas development would be considered present activities and thereby accounted for in the description of the current state of the environment (the ''Affected Environment'') and the future state of the environment in the absence of the proposed action (the ''no-action alternative''), as well as in the cumulative effects analysis. The Department has struck a balance between speculation about activities that are not yet planned and remain speculative and those that are reasonably foreseeable and have evolved to the point of being a proposal capable of meaningful NEPA analysis (for example, based on other development in the area when there has been some decision, funding, or development of a proposal (see 40 CFR 1508.23)).

Comments. Several individuals are concerned that ''interested parties and agencies'' is used throughout the entire proposed rule, but is not defined. They suggest that ''interested parties and agencies'' be defined to lend clarity on what individuals represent those groups.

Response. This final rule supplements, but does not replace the CEQ regulations. Accordingly, the Forest Service is still subject to the CEQ public involvement requirements at 40 CFR 1501.4, 1501.7, 1503.1, and 1506.6, which include informing ''persons and agencies who may be interested or affected'' by agency proposals. The CEQ regulation at 40 CFR 1506.6 further requires agencies to ''make diligent

efforts to involve the public in preparing and implementing their NEPA procedures,'' which would include public involvement in preparing environmental assessments and environmental impact statements. The Department believes the meaning of ''interested'' and ''affected parties and agencies'' is sufficiently defined in current NEPA usage and the courts' and CEQ's interpretation of these terms.

Comments. The proposed rule defined preliminary environmental impact statement (PEIS). The regulations later went on to describe that if PEISs are prepared they would be available to those interested and affected persons and agencies for comment.

Many respondents agree the development of a PEIS is good in that it makes the Forest Service's decisionmaking process transparent. However, respondents are concerned that the Forest Service does not indicate what this process will look like in practice and at what level the public will participate. Concern was raised that there could be inconsistency across the Forest Service in how the PEIS would be used which could confuse people. Also, the proposed rule does not indicate when the public must comment in order to maintain standing to appeal.

One respondent feels the proposed rule violates CEQ regulation 40 CFR 1506.8 by adding an additional stage in the NEPA process. Some respondents question what role the PEIS will play, and how the PEIS and scoping process will interact. The same people ask what level of detail will be required in a PEIS. Moreover, if the responsible official chooses to use a PEIS, it is unknown whether there will be an opportunity to challenge the Forest Service to provide more information.

There are concerns that the collaborative process and PEIS would ''over-complicate the planning process,'' ''unduly burden the public and other government agencies,'' and ''unfairly'' place those who cannot fully participate at a ''disadvantage.'' Others who commented felt that 40 CFR 1506.10, and 1502.19 should apply to all EISs the Forest Service produces for comment.

Response. Due to the confusion and concern surrounding the PEIS the Department felt it was best to remove this provision. The definition in the proposed rule found at section 220.3 and description in section 220.5 have been removed in the final rule. As discussed previously in the proposed rule preamble, collaboration with the public is already allowed and will continue as an option for the responsible official. The PEIS is simply an optional tool and its removal from the final rule will not remove that option. The responsible official will still be free to involve and inform the public above and beyond the regulations in a manner that best meets the public and government good. The provisions in the final rule at section 220.5(f) regarding circulating and filing draft and final environmental impact statements remain unchanged from the proposal.

Section 220.4(b) Emergency Responses

Comments. Section 220.4(b)(2) of the proposed rule provided ''the responsible official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important resources.'' Overall, respondents generally agree that some emergency actions should be allowed, for example when an action is needed to mitigate harm to human life or property. However, some respondents feel that by not clearly defining what an important resource is, the Forest Service could use the emergency response clause as a way to permit ''salvage logging'' or other ''high impact projects'' on the national forests. Several respondents suggest that the Forest Service re-word the emergency response provision to something like ''The responsible official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to human life, property, or rare natural resources.''

Response. The final rule, at section 220.4(b)(1), replaces ''other important resources'' with ''important natural or cultural resources'' to more clearly identify the type of resources impacted by the emergency.

Under section 220.4(b)(1), timber salvage activities solely to reduce economic loss are not emergency actions as such activity is not necessary to control the immediate impacts to life, property, or important natural or cultural resources. Some confusion and/or concern may have arisen with the use of the word ''important'' because the Forest Service appeal regulations at 36 CFR 215 includes provisions for ''emergency situations'', a term that may include the concept of economic loss: ''A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; *or that would result in substantial loss of economic value to the Federal Government* if implementation of the decision were delayed.'' (emphasis added). The appeal regulations cover a different process from the proposed NEPA procedures.

The appeal rule covers a broader range of harms which might occur during the processing of an administrative appeal. The emergency stay determination in the appeal rule allows the Forest Service to consider harms that may result from this delay in implementation. In contrast, an emergency response under this final rule is limited to actions necessary to control the immediate effects of an emergency, not the economic effects of delay brought about by an appeal.

Comments. Respondents wrote that an emergency response should not be used to constitute a special use permit request or to circumvent NEPA compliance for controversial projects.

Response. The final rule at section 220.4(b) does not create new permits or circumvent existing permits; it simply allows limited actions under narrowly defined emergency circumstances. As an example, any situations involving the use of emergency procedures under these regulations are nonetheless subject to the separate requirements of existing special use regulations at 36 CFR 251.50(b), which allow for the temporary occupancy of NFS lands without a special use authorization when necessary for the protection of life and property in emergencies.

Comment. Some people also questioned whether the emergency provision at § 220.4(b) would replace the Forest Service's efforts to assess the impacts of its fire retardant program.

Response. The Forest Service has completed an assessment of the impacts of the aerial application of fire retardant in an EA which is unaffected by this final rule. The title for that assessment is *Aerial Application of Fire Retardant Environmental Analysis, October 2007. http://www.fs.fed.us/fire/retardant/*.

Comments. Respondents were concerned about specific details of the ''emergency response'' provision. For example, what constitutes an emergency? Who determines the emergency, and how is it reported and documented for public review? Respondents are concerned that the looseness of the provision could provide an easy way to ''slide projects through under the radar without having to do a proper analysis.''

Response. There is no special meaning intended for the term ''emergency'' beyond its common usage as ''an unforeseen combination of circumstances or the resulting state that calls for immediate action'' (*Webster's Third New International Dictionary Of The English Language* 1961 and *Merriam-Webster's Collegiate Dictionary* (11th ed. 2004)); ''a sudden, urgent, usually unexpected occurrence or

occasion requiring immediate action'' (*Random House Dictionary of the English Language* (2ed. 1987)); ''a state of things unexpectedly arising, and urgently demanding immediate action'' (*The Oxford English Dictionary* 2ed. 1991) and ''[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures * * *'' (*Black's Law Dictionary* 260, 562 (8th ed. 2004)). The proposed regulation, as revised in this final rule, recognizes that responsible officials can take immediate actions to control the immediate impacts of an emergency to mitigate harm to life, property, or important natural or cultural resources.

As stated in the preamble of the proposed regulations, only such actions required to address the ''immediate impacts of the emergency that are urgently required to mitigate harm to life, property, or important natural or cultural resources'' may be taken without regard to the procedural requirements of NEPA, the CEQ regulations, or the proposed agency regulations. Thus, there are no NEPA documentation requirements for these types of situations and the final rule requires NEPA to apply to any and all subsequent proposed actions that address the underlying emergency (220.4(b)(2) and (3)). The provisions of 220.4 codify the existing Forest Service practice and CEQ guidance for emergency actions.

In the past the Forest Service has acted to protect lives, property, and important natural or cultural resources without this rule by adhering to CEQ regulations and guidance found in the CEQ *Memorandum for Federal NEPA Contacts on Emergency Actions and NEPA*, along with its associate attachments *http://ceq.hss.doe.gov/nepa/Memo_to_NEPA_Contacts_September_8_05*. For example, search and rescue or fire suppression operations responding to specific emergency situations caused by events such as flood, fire, landslides, storms, and explosions.

Sections 220.4(b)(2) and (b)(3) address emergency situations where the Forest Service puts forth proposals to address actions where ''alternative arrangements'' or routine NEPA requirements will be followed.

Section 220.4(d) Schedule of Proposed Actions

Comments. A concern was expressed that 220.4(d) contains a great deal of guidance rather than procedure language.

Response. The final rule removes the explanatory guidance related to the schedule of proposed actions (SOPA). The final rule adds a definition of ''Schedule of Proposed Actions (SOPA)'' in section 220.3. The final rule, in section 220.4(d), establishes the duty of the responsible official to make the SOPA available to the public. FSH 1909.15 contains the explanatory guidance associated with this requirement.

Comments. A few respondents are concerned that the SOPA is used as the sole or only scoping mechanism. Respondents would like to see the Forest Service clarify that scoping must not be limited to the SOPA mechanism.

Response. Since its inception, the SOPA has not been intended to be used as the only scoping mechanism as stated in previous Forest Service NEPA procedures and in the proposed rule. The final rule retains this clarification and explicitly states ''the SOPA shall not be used as the *sole* scoping mechanism for a proposed action.'' (220.4(e)(3)) (emphasis added).

Comment. Several individuals mentioned that the Forest Service does not produce a SOPA for categorical exclusions (CE), which leads to projects being implemented before the public is informed.

Response. Forest Service categorical exclusions are organized in two groups: Actions requiring a supporting record and a decision memo documenting the decision to proceed, and actions where a supporting record and a decision memo are not required, but may be prepared at the discretion of the responsible official (see section 220.6). The first group of categorically excluded actions, for which a decision memo has been or will be prepared, are included in the SOPA (see definition at section 220.3). The Forest Service believes the latter group of actions, not requiring documentation, to be of low public interest and, therefore, not appropriate for inclusion in the SOPA (such as mowing the lawn). It is important to note that the rule states, ''the SOPA shall not be used as the *sole* scoping mechanism for a proposed action.'' (220.4(e)(3)).

Section 220.4(f) Cumulative Effects Considerations of Past Actions

Comments. Section 220.4(f) of the proposed rule addresses the consideration of past actions in cumulative effects analysis. Many respondents feel that in order to complete an effective cumulative effects analysis, the Forest Service must consider past projects. Some people are concerned that the rule would weaken the requirements to look at past actions and future actions and would streamline the decisionmaking process for potentially destructive projects. On that same note, people believe that it is imperative to fully disclose all potential impacts a project might have or could have down the road, claiming that without full disclosure natural resources could be in danger. They asked how field personnel know what effects from past actions are relevant to current decisionmaking unless all such actions and their impacts were first considered.

Another concern expressed by some respondents was that the proposed rule would change the baseline condition of the landscape to what condition the landscape is considered to be in at the time an action is proposed, rather than the landscape condition at the time the Forest Service first started ''managing'' it.

Other individuals are concerned that any reduction in the scope of an agency's responsibility to conduct cumulative impact analyses will undermine CEQ guidance and regulations. A respondent stated that the CEQ itself has recognized evidence that ''the most devastating environmental effects may result * * * from the combination of individually minor effects of multiple actions over time.''

One respondent said the proposal was an illegal attempt to get around court rulings on what must be considered. The respondent points out that regulations are supposed to be complying with the CEQ regulations, not creating some guidance that attempts to get around the regulations. Because of the importance of national forests and their ecological and social benefits to people, wildlife, and plants, one respondent encouraged Forest Service personnel to consider all cumulative impacts.

Response. At section 220.4(f), this final rule incorporates verbatim, the language for the analysis of cumulative effects from the June 24, 2005 CEQ *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis*, which may be found at *http://ceq.eh.doe.gov/nepa/regs/Guidance_on_CE.pdf*. This provision is to be used with existing CEQ regulations, which use the terms effects and impacts synonymously and define cumulative impact as the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions (40 CFR 1508.7). The Forest Service agrees that it must consider past actions to determine cumulative effects, however, there is no requirement under NEPA or the CEQ regulations to arrive at a description of the state of the environment at some distant point in

the past when the Forest Service first began managing the land.

The focus of the CEQ guidance incorporated in this final rule is on the consideration of useful and relevant information related to past actions when determining the cumulative effects of proposals and alternatives. The Forest Service will conduct cumulative effects analyses necessary to inform decisionmaking and disclose environmental effects in compliance with NEPA.

To clarify the Forest Service's commitment to follow the quoted CEQ guidance concerning consideration of past actions, the first sentence in the final rule at section 220.4(g) is revised to state, ''Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with ''The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis'' dated June 24, 2005:''

Section 220.4(h) Incorporation by Reference

Comments. Several conservation organizations have concerns about the incorporation by reference provision in the proposed rule: ''Consistent with 40 CFR 1502.21, material may be incorporated by reference into any environmental or decision document.'' They are concerned the material will not be available to the public for review in a timely manner or included in the administrative record.

One conservation group feels the following needs to be added to section 220.4(h), ''No material may be incorporated by reference unless it is available for inspection by potentially interested persons within the time allowed for comment.'' Another conservation group proposed the addition of ''this material must be reasonably available to the public within the time allowed for comment and its content briefly described in the environmental document.''

Response. Referring to material incorporated by reference, the proposed rule at section 220.4(h) explicitly stated, ''This material must be reasonably available to the public and its contents briefly described in the environmental or decision document.'' This language is retained in the final rule and meets the Forest Service responsibilities and obligations under NEPA and the CEQ NEPA regulations to have the materials readily available during the comment period.

Section 220.5(a) Classes of Actions Requiring Environmental Impact Statements

Comments. Section 220.5(a)(1) details the classes of actions ''normally'' requiring preparation of an EIS. Given that 'normally' was not previously found in this provision of Forest Service procedures, many respondents are concerned that the word ''normally'' would allow the Forest Service to use its discretion to avoid preparing an EIS for environmentally damaging actions. A concern was raised that the examples given in classes of actions normally requiring an EIS are extreme and fail to acknowledge the fact that far less extreme activities will occur which will cause ''significant environmental impacts.'' A question was raised as to whether or not the requirements for these classes may be met by the appropriate use of program environmental impact statements and tiered site-specific environmental documents. A comment also noted that the requirements for a notice of intent to prepare an EIS at 220.5(b) should provide for situations where there is a lengthy period between the agency's decision to prepare an environmental impacts statement and the time of actual preparation pursuant to 40 CFR 1507.3(e).

Response. As many respondents note, previous Forest Service procedures identified ''Classes of Actions Requiring Environmental Impact Statements.'' The proposed rule at section 220.5 added the word ''normally'', thus identifying classes of actions for which EISs are typically, but not always, required. This addition was made to comply with CEQ regulations for agency NEPA procedures that require agencies to identify typical classes of action ''Which normally do require environmental statements'' (40 CFR 1507.3(b)(2)(i)). It will be rare to not prepare an EIS given the circumstances described in the classes. The responsible official may prepare an EA in situations where an EIS is ''normally'' prepared if, in their professional judgment, they have complied with the standards for determination of significance as specified in the CEQ regulations at 40 CFR 1508.27. This standard is also articulated in the handbook being published concurrently with these regulations. Therefore, the final rule retains the word ''normally'' in section 220.5.

In the list of classes at section 220.5(a)(2), the final rule changes the reference to ''inventoried roadless area'' to ''inventoried roadless area or potential wilderness area''. Forest Service land management planning procedures in FSH 1909.12, chapter 70, describe a facet of the land management planning process whereby potential wilderness areas are identified. Once completed, the identification of potential wilderness areas would be a more contemporary inventory than the previously-conducted roadless area inventory. Some units of the National Forest System have completed the identification of potential wilderness areas and no longer maintain an inventory of roadless areas, while others have not yet completed identification of potential wilderness areas and, therefore, still maintain a roadless area inventory. The intent of the revised language at 220.5(a)(2) is to account for either scenario.

Acreages were removed from the Class 2 examples in the proposed rule section 220.5(a) in response to concerns that the examples of actions for which EISs would normally be required represent extreme cases. The word ''substantial'' replaces the acreage in the first example (220.5(a)(i)) in the final rule to be consistent with the description of Class 2. The following new language has been included in the final rule at section 220.5(a): ''Examples include but are not limited to:'' To emphasize that the stated examples are not all-inclusive. The Department feels that the examples reflect Forest Service experience implementing NEPA and provide the context for each class.

The 3rd Class of Action listed in the proposed rule, ''Other proposals to take major Federal actions that may significantly affect the quality of the human environment'' was deleted in this final rule because it did not describe a proposal but only rephrased the requirement for when to prepare an EIS.

Program environmental impact statements will continue to satisfy the requirements of this section. Such impact statements document analyses of broad actions or programs. Site-specific environmental impact statements or environmental assessments for actions that fall within the scope of a program environmental impact statement need only summarize the issues discussed in the program statement and incorporate discussions from the program statement by reference, concentrating on the issues specific to the subsequent action. (See 40 CFR 1502.20)

Finally, the requirements for the notice of intent at 220.5(b) have been changed in the final rule to include the following sentence: ''Where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual

preparation, the notice of intent may be published at a reasonable time in advance of preparation of the draft statement.''

Section 220.5(e) Alternatives

Comments. A concern was raised that the proposed rule language ''reasonable alternatives should meet the purpose and need,'' would preclude alternatives that do not fully meet the purpose and need for the proposal. The respondent felt the statement is unduly restrictive and should be modified to provide a justifiable range of reasonableness.

Response. The word ''should'' is retained in this provision in the final rule because it provides focus for the development and design of alternatives and continues to allow for reasonable variations, which encompass a reasonable range.

Comments. The proposed rule provision for documenting consideration of the no-action alternative by contrasting the current condition and expected future condition should the proposed action not be undertaken, raised a number of concerns that the Forest Service would no longer consider a no-action alternative. Some respondents are concerned that without the no-action alternative being documented and considered as traditionally done, the effects of doing nothing will not be adequately expressed. Some expressed that not considering a no-action alternative would be illegal.

Response. The intent of the proposed regulation is to continue to require consideration of the no-action alternative as required by 40 CFR 1502.14(d), yet the wording caused some to think the no action alternative would not be considered. To avoid confusion as to the Forest Service's commitment always to consider and document the no-action alternative in an EIS, the proposed rule language is not in the final rule.

Comments. Proposed rule section 220.5(e)(3) recognizes how adaptive management may be incorporated into a proposal and alternatives. Some respondents are supportive of adaptive management and feel that if adjustments are made during implementation, the action would be acceptable so long as the adjustments were fully described and their effects disclosed in the EIS. Others however feel the rule is self-defeating because it still requires that adjustments be ''clearly articulated and pre-specified'' and ''fully analyzed.'' They would like to see the Forest Service's final rule ''clarify that adaptive management is intended to deal with uncertainty, and that the goal is to use adaptation to achieve a desired result.''

Others expressed concern that a defined process for making adjustments with adaptive management has not been described. They ask, for example, who would be in charge of making the decision, how is the public informed, and how will the adjustments be monitored and reported. Several respondents feel that before an ''adjustment'' or substantial change is made, a supplemental EIS would be needed.

Response. Section 220.5(e)(3) of the proposed rule is retained in the final rule at section 220.5(e)(2). The intent of the adaptive management option in the proposed regulation is to allow for possible changes in an action to achieve the desired effect without having to reanalyze the proposal and reconsider the decision. When proposing an action the responsible official may identify possible adjustments that may be appropriate during project implementation. Those possible adjustments must be described and their effects analyzed in the EIS. The decision may then allow for those adjustments during project implementation.

The requirements for supplemental EISs at 40 CFR 1502.9(1) continues to apply under the final rule (see 220.1(b)). NEPA and the CEQ regulations do not specify how the Forest Service uses adaptive management, and it is the responsibility of the Forest Service to specify roles, responsibilities, and procedures for implementing adaptive management adjustments in the documents available for public notice and comment as part of NEPA and other statutes. If the responsible official identifies possible adjustments in the decision, the official will also identify any monitoring and/or public notification requirements as part of the NEPA and decisionmaking process. The need described under the CEQ regulations for a supplemental EIS on an adjustment is dependent on the degree to which the adjustment was specified and analyzed in the analyses. The responsible official is the person who is responsible for implementing the decision and making any adjustments during implementation. If the responsible official identified possible adjustments in the decision, the official will also identify any monitoring and/or public notification requirements as part of the NEPA and decisionmaking process.

Section 220.5(g) Circulating and Filing Draft and Final Environmental Impact Statements

Section 220.5(f)(2) of the final rule adds the reference ''40 CFR 1506.9'' to other citations related to requirements for filing and circulating EISs. The omission of this reference in the proposed rule was an oversight.

Section 220.6 Categorical Exclusions

Comments. Many respondents are concerned about a number of the categories set out in the proposed rule, for various reasons. Some conservation groups argue that the proposed rule is a continuation of the ''administration's disturbing and unfortunate trend toward undermining NEPA, from categorically excluding both forest planning and project-level decisions from NEPA analysis and documentation.'' Many respondents feel the categorical exclusions should be eliminated from the rule; various people suggest some categories are illegal. Many respondents argue that certain categorically excluded actions would create significant impacts and should go through the NEPA process.

Some respondents reference *Citizens for Better Forestry* v. *U.S. Dept. of Agriculture*, 481 F. Supp. 2d 1059 (N.D. Cal. 2007), stating the proposed rule is illegal in light of this ruling.

Additionally, some conservation groups are concerned about the Forest Service's proposal to allow an internal review to determine whether an extraordinary circumstance will cause a proposed action to have a significant impact on the environment. Citing *Rhodes* v. *Johnson*, 153 F.3d 785, 790 (7th Cir 1998), they state that the environmental assessment is the process required to make the determination if the proposed action will have a significant impact on the environment. The group believes that the wording of the proposed rule at 220.6(b), regarding the determination whether there are extraordinary circumstances, should be changed from ''Resource conditions that should be considered'' to ''Resource conditions that shall be considered * * *''. They also believe that the list of resource conditions provided in the proposed rule should not be exhaustive, and that other items should be added such as inventoried roadless areas, steep slopes, highly erosive soils, state listed species, karst topography, caves, and proposed wild and scenic river corridors. The regulations should require an analysis addressing any extraordinary circumstance listed in the regulations or identified in public comments, according to the respondent.

Response. This final rule is moving established categories and language on extraordinary circumstances from the Forest Service NEPA procedures previously located in FSH 1909.15 to 36 CFR 220.6. These categories and requirements were established following public review and comment, in consultation with CEQ and with CEQ's concurrence. The final rule does not add any new categories, nor does it substantively alter existing requirements regarding extraordinary circumstances. The Department did not propose any changes to the categorical exclusions or associated requirements and does not believe any changes are warranted in this final rule.

Regarding the allegation that the court ruling in *Citizens for Better Forestry* v. *U.S. Dept. of Agriculture* makes this rule illegal: In an order dated March 30, 2007, the United States District Court enjoined the USDA from implementing and utilizing the 2005 land management planning rule at 36 CFR part 219 until it takes additional steps to comply with the court's opinion regarding the Administrative Procedure Act (APA), Endangered Species Act (ESA), and NEPA. The Court stated, ''In particular, the agency must provide notice and comment on the 2005 Rule as required by the APA since the court concludes that the rule was not a 'logical outgrowth' of the 2002 Proposed Rule. Additionally, because the 2005 Rule may significantly affect the quality of the human environment under NEPA, and because it may affect listed species and their habitat under ESA, the agency must conduct further analysis and evaluation of the impact of the 2005 Rule in accordance with those statutes.'' This ruling on the forest planning regulations (which have been revised and reissued in 2008) in no way invalidates this final rule regarding Forest Service NEPA obligations and responsibilities for proposed forest plans.

The court ruling cited by some respondents in *Rhodes* v. *Johnson* concerned an interpretation of the Forest Service's procedures for determining whether extraordinary circumstances exist. The ruling was made in 1998. In 2002, the Forest Service clarified its procedures for consideration of extraordinary circumstances, in consultation with CEQ and following public review and comment. The clarification specified that the mere presence of one or more of the listed resource conditions does not preclude use of a categorical exclusion; rather it is the degree of potential effect of a proposed action on the resource conditions that determines whether or not extraordinary circumstances exist. Furthermore, the provision at § 220.6(c) states that uncertainty over the significance of effects of a proposed action requires preparation of an EA.

If a proposed action is within a categorical exclusion identified in Forest Service procedures, the responsible official must determine that there are no extraordinary circumstances in which a normally excluded action may have a significant environmental effect. The responsible official relies on many sources of information in making a determination concerning extraordinary circumstances, including public comment, specialist reports, and consultation with other agencies.

The extraordinary circumstances requirements include a list of resource conditions that ''should'' be considered. ''Should'' is used instead of ''shall'' because ''should'' underscores that the list is not intended to be exhaustive. The list of resource conditions is intended as a starting place and does not preclude consideration of other factors or conditions by the responsible official with the potential for significant environmental effects.

While some Forest Service categorical exclusions of limited scope do not require a decision memo or project record, a majority of the Forest Service's categories do require preparation of a decision memo and a supporting record. The project record and decision memo both document the determination that no extraordinary circumstances exist (§ 220.6(e) and (f)).

Reviewers should note that the United States Court of Appeals for the Ninth Circuit has invalidated the categorical exclusion for hazardous fuels reduction activities (§ 220.6(e)(10)). *Sierra Club* v. *Bosworth*, 510 F.3d 1016 (9th Cir. 2007). A motion for rehearing is pending for that case. Because judicial proceedings are ongoing the category will be retained subject to the Chief's December 19, 2007 instructions that Forest Service officials must refrain from use of this category while the litigation remains unresolved. See *http://www.fs.fed.us/emc/nepa/nepa_procedures/index.htm*. The Forest Service will fully comply with all judicial orders and instructions. Once the judicial process has been concluded, the category will either remain or be removed, depending upon the litigation's outcome. If, at a later date, the Department determines changes need to be made to section 220.6, those proposed changes will be made in consultation with CEQ and made available to the public for review and comment.

The Department moved existing Forest Service categories and associated language directly from its NEPA procedures previously found in FSH 1909.15 chapter 30 to the proposed rule. The only changes made were minor editorial changes for clarity. In transmitting and formatting the existing categorical exclusions for the proposed regulation, the following statement about ''decision memos'' in the existing procedures was inadvertently left out of the proposed regulation: ''If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR 219.7(c) satisfies the decision memo requirements of this section.'' The statement is intended to avoid duplicate decision documents for land management plans. Thus, the final rule includes this statement.

Section 220.7 Environmental Assessments

Comments. One conservation group is concerned about the length of EAs. This group believes the Forest Service is producing lengthy EAs, which should be EISs. They state that the CEQ has advised agencies to keep the length for an EA to 10–15 pages. They feel that the Forest Service may incorporate material by reference to reduce the length of the document. The group suggests that the Forest Service should add page requirements to its proposed rule, to avoid lengthy EAs.

Response. The final rule includes incorporation by reference in section 220.4, General Requirements, subsection (h) 'Incorporation by Reference', section 220.7 'Environmental Analysis and Decision Notice', subsections (a), (b)(2)(iii) and (iv). Section 220.7, 'Environmental Analysis and Decision Notices' emphasizes brief, succinct documentation. Existing guidance emphasizes the use of incorporation by reference as a tool for the responsible official to use, and grants the flexibility needed to provide the documentation necessary for the analysis but keeps the page limits within what is required for adequate disclosure. Consequently, there is no need to set specific page limits.

Comments. Many respondents commented on section 220.7(b)(iii) of the proposed rule, which would allow consideration of a no-action alternative to be shown by contrasting the impacts of the proposal and alternatives with the current condition and expected future conditions if the proposed action were not implemented. Many respondents expressed the importance of not allowing such a ''no-action alternative''

to lead to a decreased analysis and consideration of ''no-action.'' They emphasize that informed and meaningful consideration of alternatives, including the no-action alternative, is an integral part of the NEPA process.

Response. After consideration of the comments, the Department has chosen to keep the provision in the final rule. There is no specific CEQ requirement to include a no-action alternative in an EA and the language follows CEQ's EA guidance *Preparing Focused, Concise and Timely Environmental Assessments* (see *http://ceq.eh.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf*). By contrasting the impacts of the proposal and alternatives with the current condition and expected future condition of the environment, the effects of a no-action alternative are considered. This provision is provided as an option for responsible officials to use if in their best judgment it serves the need of the analysis.

Comments. Respondents want the Forest Service to provide a definition for ''unresolved conflicts'' and to present examples of such actions. Others want to know who decides whether there are ''no unresolved conflicts concerning alternative uses of available resources.''

Response. The term ''unresolved conflicts'' comes directly from NEPA (42 U.S.C. 4332(2)E). Typically, most Forest Service proposals will have alternatives; however, the final rule specifically recognizes that in some situations there may be no conflicts regarding a proposed action and in such cases alternatives would not be required.

On September 8, 2005, the CEQ issued EA guidance to federal agencies entitled *Preparing Focused, Concise and Timely Environmental Assessments*, that explained language at section 102(2)(E) of NEPA ''unresolved conflicts concerning alternative uses of available resources'' (42 U.S.C. 4332(2)(E)). The CEQ guidance states: ''When there is consensus about the proposed action based on input from interested parties, you can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, you need to develop reasonable alternatives to meet project needs'' (Attachment to September 8, 2005, Memorandum for Federal NEPA Contacts *http://ceq.eh.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf*). Ultimately, the responsible official must decide on whether alternatives to the proposed action are appropriate, ''based on input from interested parties.''

Regulatory Certification

National Environmental Policy Act

The final rule would move existing procedures for implementing the National Environmental Policy Act (NEPA) from the Forest Service handbook to 36 CFR part 220 and provide additional direction. The rule would not directly impact the environment. Forest Service NEPA procedures are procedural guidance to assist in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The CEQ set forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR 1505.1 and 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 issued September 30, 1993, as amended by Executive Order 13422 on regulatory planning and review and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). It has been determined that this is not an economically significant action. This action to issue agency regulations will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This action will not interfere with an action taken or planned by another agency. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decision-making, this final rule to establish agency implementing procedures for NEPA in the Code of Federal Regulations (CFR) has been designated as significant and, therefore, is subject to Office of Management and Budget (OMB) review under Executive Order 12866.

In accordance with the OMB Circular A–4, ''Regulatory Analysis,'' a cost/benefit analysis was conducted. The analysis compared the costs and benefits associated with the current condition of having agency implementing procedures combined with agency explanatory guidance in Forest Service Handbook (FSH) and this final condition of having implementing direction in regulation and explanatory guidance in FSH.

Many benefits and costs associated with the rule are not quantifiable. Benefits, including collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved legal standing indicate a positive effect of the new rule.

Moving implementing NEPA procedures from the FSH to regulation is expected to provide a variety of potentially beneficial effects. This rule gives Forest Service NEPA procedures more visibility, consistent with the transparent nature of the Agency's environmental analysis and decision-making.

Maintaining agency explanatory guidance in the FSH would facilitate timely agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to addresses and internet links to assist field units when implementing the NEPA process. Finally, the changes to the Forest Service NEPA procedures are intended to provide the Forest Service specific options to meet the intent of NEPA through collaboration, the establishment of incremental alternative development, and the use of adaptive management principles.

Based on the context of this analysis, no one factor creates a significant factor, but taken together does create the potential for visible improvements in the agency's NEPA program.

Moreover, this final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial small entities flexibility assessment has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

Federalism

The Agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The Agency has concluded that the rule

conforms with the federalism principles set out in this Executive order; will not impose any compliance costs on the states; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Agency has assessed the impact of this rule on Indian Tribal governments and has determined that it does not significantly or uniquely affect communities of Indian Tribal governments. The rule deals with requirements for NEPA analysis and has no direct effect regarding the occupancy and use of NFS land.

The Agency has also determined that this rule does not impose substantial direct compliance costs on Indian Tribal governments or preempt Tribal law. Therefore, it has been determined that this rule does not have Tribal implications requiring advance consultation with Indian Tribes.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the rule does not pose the risk of a taking of protected private property.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988 of February 7, 1996, Civil Justice Reform. After adoption of this rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) the rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

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

Energy Effects

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

Controlling Paperwork Burdens on the Public

This rule does not contain any additional recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 220

Administrative practices and procedures, Environmental impact statements, Environmental protection, National forests, Science and technology.

■ Therefore, for the reasons set forth in the preamble, the Department of Agriculture amends chapter II of Title 36 of the Code of Federal Regulations by adding part 220 to read as follows:

PART 220—NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

Sec.
220.1 Purpose and scope.
220.2 Applicability.
220.3 Definitions.
220.4 General requirements.
220.5 Environmental impact statement and record of decision.
220.6 Categorical exclusions.
220.7 Environmental assessment and decision notice.

Authority: 42 U.S.C. 4321 *et seq.*; E. O. 11514; 40 CFR parts 1500–1508; 7 CFR part 1b.

§ 220.1 Purpose and scope.

(a) *Purpose.* This part establishes Forest Service, U.S. Department of Agriculture (USDA) procedures for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500 through 1508).

(b) *Scope.* This part supplements and does not lessen the applicability of the CEQ regulations, and is to be used in conjunction with the CEQ regulations and USDA regulations at 7 CFR part 1b.

§ 220.2 Applicability.

This part applies to all organizational elements of the Forest Service. Consistent with 40 CFR 1500.3, no trivial violation of this part shall give rise to any independent cause of action.

§ 220.3 Definitions.

The following definitions supplement, by adding to, the terms defined at 40 CFR parts 1500–1508.

Adaptive management. A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

Decision document. A record of decision, decision notice or decision memo.

Decision memo. A concise written record of the responsible official's decision to implement an action categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA).

Decision notice. A concise written record of the responsible official's decision when an EA and finding of no significant impact (FONSI) have been prepared.

Environmentally preferable alternative. The environmentally preferable alternative is the alternative that will best promote the national environmental policy as expressed in NEPA's section 101 (42 U.S.C. 4321). Ordinarily, the environmentally preferable alternative is that which causes the least harm to the biological and physical environment; it also is the alternative which best protects and preserves historic, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

Reasonably foreseeable future actions. Those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified

proposals. Identified proposals for Forest Service actions are described in § 220.4(a)(1).

Responsible official. The Agency employee who has the authority to make and implement a decision on a proposed action.

Schedule of proposed actions (SOPA). A Forest Service document that informs the public about those proposed and ongoing Forest Service actions for which a record of decision, decision notice or decision memo would be or has been prepared. The SOPA also identifies a contact for additional information on any proposed actions.

§ 220.4 General requirements.

(a) *Proposed actions subject to the NEPA requirements.* As required by 42 U.S.C. 4321 *et seq.,* a Forest Service proposal is subject to the NEPA requirements when all of the following apply:

(1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (*see* 40 CFR 1508.23);

(2) The proposed action is subject to Forest Service control and responsibility (*see* 40 CFR 1508.18);

(3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (*see* 40 CFR 1508.14); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).

(b) *Emergency responses.* When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation in accordance with the provisions in §§ 220.5, 220.6, and 220.7 of this part, then the following provisions apply.

(1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(2) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section, and such actions are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accord with these regulations. If the responsible official finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for environmental assessments, findings of no significant impact and categorical exclusions (FSM 1950.41a). Consultation with the Washington Office shall be coordinated through the appropriate regional office.

(3) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section and such actions are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate regional office and the Washington Office, about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

(c) *Agency decisionmaking.* For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with agency decisionmaking by:

(1) Completing the environmental document review before making a decision on the proposal;

(2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;

(3) Including environmental documents, comments, and responses in the administrative record;

(4) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and

(5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents.

(d) *Schedule of proposed actions (SOPA).* The responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA.

(e) *Scoping (40 CFR 1501.7).* (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§ 220.6).

(2) Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7. Because the nature and complexity of a proposed action determine the scope and intensity of analysis, no single scoping technique is required or prescribed.

(3) The SOPA shall not to be used as the sole scoping mechanism for a proposed action.

(f) *Cumulative effects considerations of past actions.* Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with ''The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis'' dated June 24, 2005. The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action. Agencies then look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the agency has identified those present effects of past actions that warrant consideration, the agency assesses the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents an agency assessment of the cumulative effects of the actions considered (including past, present, and reasonable foreseeable future actions) on the affected environment. With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking. (40 CFR 1508.7)

(g) *Classified information.* To the extent practicable, the responsible official shall segregate any information that has been classified pursuant to Executive order or statute. The responsible official shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the responsible official must withhold the entire analysis document from the public; however, the responsible official shall otherwise prepare the analysis documentation in accord with applicable regulations. (40 CFR 1507.3(c))

(h) *Incorporation by reference.* Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document. (40 CFR 1502.21)

(i) *Applicants.* The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(g) the responsible official shall initiate the NEPA process.

§ 220.5 Environmental impact statement and record of decision.

(a) *Classes of actions normally requiring environmental impact statements.*

(1) *Class 1:* Proposals to carry out or to approve aerial application of chemical pesticides on an operational basis. Examples include but are not limited to:

(i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

(ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

(iii) Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

(2) *Class 2:* Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area. Examples include but are not limited to:

(i) Constructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a potential wilderness area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area.

(b) *Notice of intent.* Normally, a notice of intent to prepare an EIS shall be published in the **Federal Register** as soon as practicable after deciding that an EIS will be prepared. Where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent may be published at a reasonable time in advance of preparation of the draft statement. A notice must meet the requirements of 40 CFR 1508.22, and in addition, include the following:

(1) Title of the responsible official(s);

(2) Any permits or licenses required to implement the proposed action and the issuing authority;

(3) Lead, joint lead, or cooperating agencies if identified; and

(4) Address(es) to which comments may be sent.

(c) *Withdrawal notice.* A withdrawal notice must be published in the **Federal Register** if, after publication of the notice of intent or notice of availability, an EIS is no longer necessary. A withdrawal notice must refer to the date and **Federal Register** page number of the previously published notice(s).

(d) *Environmental impact statement format and content.* The responsible official may use any EIS format and design as long as the statement is in accord with 40 CFR 1502.10.

(e) *Alternative(s).* The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. The following procedures are available to the responsible official to develop and analyze alternatives:

(1) The responsible official may modify the proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases, the responsible official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives shall be included or incorporated by reference in accord with 40 CFR 1502.21.

(2) The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EIS must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect.

(f) *Circulating and filing draft and final environmental impact statements.*

(1) The draft and final EISs shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (*see* 40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 ''Filing requirements,'' 40 CFR 1506.10 ''Timing of agency action,'' and 40 CFR 1502.19 ''Circulation of the environmental impact statement'' shall only apply to the last draft and final EIS and not apply to material produced prior to the draft EIS or between the draft and final EIS which are filed with EPA.

(3) When the responsible official determines that an extension of the review period on a draft EIS is appropriate, notice shall be given in the same manner used for inviting comments on the draft.

(g) *Distribution of the record of decision.* The responsible official shall notify interested or affected parties of the availability of the record of decision as soon as practical after signing.

§ 220.6 Categorical exclusions.

(a) *General.* A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

(1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or

(2) The proposed action is within a category listed in § 220.6(d) and (e).

(b) *Resource conditions.* (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;

(ii) Flood plains, wetlands, or municipal watersheds;

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;

(iv) Inventoried roadless area or potential wilderness area;

(v) Research natural areas;

(vi) American Indians and Alaska Native religious or cultural sites; and

(vii) Archaeological sites, or historic properties or areas.

(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

(c) *Scoping.* If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.

(d) *Categories of actions for which a project or case file and decision memo are not required.* A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(1) Orders issued pursuant to 36 CFR part 261—Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include but are not limited to:

(i) Closing a road to protect bighorn sheep during lambing season, and

(ii) Closing an area during a period of extreme fire danger.

(2) Rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. Examples include but are not limited to:

(i) Adjusting special use or recreation fees using an existing formula;

(ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;

(iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;

(iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;

(v) Establishing a servicewide process for responding to offers to exchange land and for agreeing on land values; and

(vi) Establishing procedures for amending or revising forest land and resource management plans.

(3) Repair and maintenance of administrative sites. Examples include but are not limited to:

(i) Mowing lawns at a district office;

(ii) Replacing a roof or storage shed;

(iii) Painting a building; and

(iv) Applying registered pesticides for rodent or vegetation control.

(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;

(ii) Grading a road and clearing the roadside of brush without the use of herbicides;

(iii) Resurfacing a road to its original condition;

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and

(v) Surveying, painting, and posting landline boundaries.

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

(6) Acquisition of land or interest in land. Examples include but are not limited to:

(i) Accepting the donation of lands or interests in land to the NFS, and

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act;

(ii) Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and

(iv) Exchange of administrative sites involving other than NFS lands.

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

(9) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples include, but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

(10) Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization. Examples include, but are not limited to:

(i) Amending a special use authorization to reflect administrative changes such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards), and

(ii) Issuance of a new special use authorization to reflect administrative changes such as, a change of ownership or control of previously authorized

facilities or activities, or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement).

(e) *Categories of actions for which a project or case file and decision memo are required.* A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (17) of this section. As a minimum, the project or case file should include any records prepared, such as: The names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo; and a list of the people notified of the decision. If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR part 219 satisfies the decision memo requirements of this section.

(1) Construction and reconstruction of trails. Examples include, but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook, and

(ii) Reconstructing an existing trail to allow use by handicapped individuals.

(2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include, but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines, and

(ii) Reconstructing a power line by replacing poles and wires.

(3) Approval, modification, or continuation of minor special uses of NFS lands that require less than five contiguous acres of land. Examples include, but are not limited to:

(i) Approving the construction of a meteorological sampling site;

(ii) Approving the use of land for a one-time group event;

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;

(iv) Approving the use of land for a 40-foot utility corridor that crosses one mile of a national forest;

(v) Approving the installation of a driveway, mailbox, or other facilities incidental to use of a residence;

(vi) Approving an additional telecommunication use at a site already used for such purposes;

(vii) Approving the removal of mineral materials from an existing community pit or common-use area; and

(viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.

(4) [Reserved]

(5) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include, but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

(6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to:

(i) Girdling trees to create snags;

(ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;

(iii) Prescribed burning to control understory hardwoods in stands of southern pine; and

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

(7) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source;

(ii) Adding brush to lake fish beds; and

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

(8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include, but are not limited to:

(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;

(ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;

(iii) Trenching to obtain evidence of mineralization;

(iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;

(v) Redesigning or rearranging surface facilities within an approved site;

(vi) Approving interim and final site restoration measures; and

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of ⅓ mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

(9) Implementation or modification of minor management practices to improve allotment condition or animal distribution when an allotment management plan is not yet in place. Examples include, but are not limited to:

(i) Rebuilding a fence to improve animal distribution;

(ii) Adding a stock watering facility to an existing water line; and

(iii) Spot seeding native species of grass or applying lime to maintain forage condition.

(10) Hazardous fuels reduction activities using prescribed fire, not to exceed 4,500 acres; and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(i) Shall be limited to areas:

(A) In the wildland-urban interface; or

(B) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

(ii) Shall be identified through a collaborative framework as described in ''A Collaborative Approach for Reducing Wildland Fire Risks to Communities and Environment 10-Year Comprehensive Strategy Implementation Plan'';

(iii) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;

(iv) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(v) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

(11) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

(i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;

(ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(iii) Shall be completed within 3 years following a wildland fire.

(12) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and

(ii) Harvest of fire-damaged trees.

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and

(ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

(15) Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

(16) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR part 219 *et seq.* that provide broad guidance and information for project and activity decisionmaking in a NFS unit. Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

(17) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:

(i) One mile of new road construction;

(ii) One mile of road reconstruction;

(iii) Three miles of individual or co-located pipelines and/or utilities disturbance; or

(iv) Four drill sites.

(f) *Decision memos.* The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practical after signing. While sections may be combined or rearranged in the interest of clarity and brevity, decision memos must include the following content:

(1) A heading, which must identify:

(i) Title of document: Decision Memo;

(ii) Agency and administrative unit;

(iii) Title of the proposed action; and

(iv) Location of the proposed action, including administrative unit, county, and State.

(2) Decision to be implemented and the reasons for categorically excluding the proposed action including:

(i) The category of the proposed action;

(ii) The rationale for using the category and, if more than one category could have been used, why the specific category was chosen;

(iii) A finding that no extraordinary circumstances exist;

(3) Any interested and affected agencies, organizations, and persons contacted;

(4) Findings required by other laws such as, but not limited to findings of consistency with the forest land and resource management plan as required by the National Forest Management Act; or a public interest determination (36 CFR 254.3(c));

(5) The date when the responsible official intends to implement the decision and any conditions related to implementation;

(6) Whether the decision is subject to review or appeal, the applicable regulations, and when and where to file a request for review or appeal;

(7) Name, address, and phone number of a contact person who can supply further information about the decision; and

(8) The responsible official's signature and date when the decision is made.

§ 220.7 Environmental assessment and decision notice.

(a) *Environmental assessment.* An environmental assessment (EA) shall be prepared for proposals as described in § 220.4(a) that are not categorically excluded from documentation (§ 220.6) and for which the need of an EIS has not been determined (§ 220.5). An EA may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of paragraph (b) of this section are met. The EA may incorporate by reference information that is reasonably available to the public.

(b) *An EA must include the following:*

(1) Need for the proposal. The EA must briefly describe the need for the project.

(2) Proposed action and alternative(s). The EA shall briefly describe the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.

(i) When there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the EA need only analyze the proposed action and proceed without consideration of additional alternatives.

(ii) The EA may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternative(s) with the current condition and expected future condition if the proposed action were not implemented.

(iii) The description of the proposal and alternative(s) may include a brief description of modifications and incremental design features developed through the analysis process to develop the alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accord with 40 CFR 1502.21.

(iv) The proposed action and one or more alternatives to the proposed action

may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EA must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official whether the action is having its intended effect.

(3) Environmental Impacts of the Proposed Action and Alternative(s). The EA:

(i) Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an EIS or a FONSI (40 CFR 1508.9);

(ii) Shall disclose the environmental effects of any adaptive management adjustments;

(iii) Shall describe the impacts of the proposed action and any alternatives in terms of context and intensity as described in the definition of ''significantly'' at 40 CFR 1508.27;

(iv) May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately; and

(v) May incorporate by reference data, inventories, other information and analyses.

(4) Agencies and Persons Consulted.

(c) *Decision notice.* If an EA and FONSI have been prepared, the responsible official must document a decision to proceed with an action in a decision notice unless law or regulation requires another form of decision documentation (40 CFR 1508.13). A decision notice must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and FONSI. A decision notice must include:

(1) A heading, which identifies the:

(i) Title of document;

(ii) Agency and administrative unit;

(iii) Title of the project; and

(iv) Location of the action, including county and State.

(2) Decision and rationale;

(3) Brief summary of public involvement;

(4) A statement incorporating by reference the EA and FONSI if not combined with the decision notice;

(5) Findings required by other laws and regulations applicable to the decision at the time of decision;

(6) Expected implementation date;

(7) Administrative review or appeal opportunities and, when such opportunities exist, a citation to the applicable regulations and directions on when and where to file a request for review or an appeal;

(8) Contact information, including the name, address, and phone number of a contact person who can supply additional information; and

(9) Responsible Official's signature, and the date the notice is signed.

(d) *Notification.* The responsible official shall notify interested and affected parties of the availability of the EA, FONSI and decision notice, as soon as practicable after the decision notice is signed.

Dated: July 14, 2008.

Mark Rey,

Under Secretary, NRE.

[FR Doc. E8–16499 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–11–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA81

Agency Records Centers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Correcting amendment.

SUMMARY: This document amends NARA's regulations related to the storage requirements for agency records, to correct language contained in final regulations that were published in the **Federal Register** of Thursday, December 2, 1999, (64 FR 67660).

DATES: Effective on July 24, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1850.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction updated the standards that records center storage facilities must meet to store Federal records. The regulation applies to all Federal agencies, including NARA, that establish and operate records centers, and to agencies that contract for the services of commercial records storage facilities.

Need for Correction

As published, the final regulations contain an error in Appendix B that needs to be clarified. The introductory paragraph erroneously referred to a nonexistent paragraph o. and the correct designation was n.

List of Subjects in 36 CFR Part 1228

Archives and records.

■ Accordingly, 36 CFR part 1228 is corrected by making the following correcting amendments:

PART 1228—DISPOSITION OF FEDERAL RECORDS

■ 1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

■ 2. Revise the introductory sentence of paragraph 2 of Appendix B to Part 1228 to read:

Appendix B to Part 1228—Alternative Certified Fire-Safety Detection and Suppression System(s)

* * * * *

2. *Specifications for NARA facilities using 15 foot high records storage.* NARA fire-safety systems that incorporate all components specified in paragraphs 2.a. through n. of this appendix have been tested and certified to meet the requirements in § 1228.230(s) for an acceptable fire-safety detection and suppression system for storage of Federal records.

Dated: July 21, 2008.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E8–17080 Filed 7–23–08; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 10

[PS Docket No. 07–287; FCC 08–99]

Commercial Mobile Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts technical rules necessary to enable Commercial Mobile Service (CMS) alerting capability for CMS providers who elect to transmit emergency alerts to their subscribers. By adopting these rules, the Commission takes the next step in its satisfaction of the requirements of the Warning, Alert and Response Network (WARN) Act. The Commission adopts an architecture for the Commercial Mobile Alerting System (CMAS) based on the recommendations of the Commercial Mobile Service Alert Advisory Committee (CMSAAC).

DATES: Effective September 22, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418–1096.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's CMAS First Report and Order in PS Docket No. 07–287, adopted and released on April 9, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Order

1. *Background*. On October 13, 2006, the President signed the Security and Accountability for Every Port (SAFE Port) Act into law. Title VI of the SAFE Port Act, the Warning Alert and Response Network (WARN) Act, establishes a process for the creation of the CMAS whereby CMS providers may elect to transmit emergency alerts to their subscribers. The WARN Act requires the Commission to undertake a series of actions to accomplish that goal, including, by December 12, 2006 (within 60 days of enactment), establishing and convening an advisory committee to recommend system critical protocols and technical capabilities for the CMAS. Accordingly, the Commission formed the CMSAAC, which had its first meeting on December 12, 2006. The WARN Act further required the CMSAAC to submit its recommendations to the Commission by October 12, 2007 (one year after enactment). The CMSAAC submitted its report on that date.

2. Section 602(a) of the WARN Act further requires that, by April 9, 2008 (within 180 days of receipt of the CMSAAC's recommendations), the Commission complete a proceeding to adopt ''relevant technical standards, protocols, procedures and technical requirements'' based on recommendations submitted by the CMSAAC, ''necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts.'' On December 14, 2007, the Commission released Commercial Mobile Alert System, Notice of Proposed Rulemaking, 73 FR 546, January 3, 2008, requesting comment on, among other things, the technical requirements the Commission should adopt to facilitate CMS providers' voluntary transmission of emergency alerts. The Commission specifically invited comment on the CMSAAC's proposed technical requirements. Comments were due on February 4, 2008, with Reply Comments due on February 19, 2008. On April 9, 2008, the Commission adopted the CMAS First Report and Order, thus satisfying section 602(a) of the WARN Act. On July 15, 2008, the Commission released an Order on Reconsideration (FCC 08–166), in which the Commission, on its own motion, reconsidered and clarified the timeline under which the CMAS First Report and Order required CMS providers to implement the CMAS technical requirements, standards and protocols. This Order on Reconsideration revised paragraph 95 of the CMAS First Report and Order and § 10.11 of the rules adopted in the CMAS First Report and Order. These revisions are reflected in this **Federal Register** summary in paragraph 94 below and the rules published herein.

3. *Introduction*. In the CMAS First Report and Order, the Commission adopted rules necessary to enable CMS alerting capability for CMS providers who elect to transmit emergency alerts to their subscribers. Specifically, the Commission adopted the architecture for the CMAS proposed by the CMSAAC and concluded that a Federal Government entity should aggregate, authenticate, and transmit alerts to the CMS providers. In addition, the Commission adopted technologically neutral rules governing:

- *CMS provider-controlled elements within the CMAS architecture* (*e.g.*, the CMS Provider Gateway, CMS Provider infrastructure and mobile devices);
- *Emergency alert formatting, classes, and elements:* Participating CMS Providers must transmit three classes of alerts—Presidential, Imminent Threat, and AMBER alerts;
- *Geographic targeting (geo-targeting):* Participating CMS Providers generally are required to target alerts at the county-level as recommended by the CMSAAC;
- *Accessibility for people with disabilities and the elderly:* Participating CMS Providers must include an audio attention signal and vibration cadence on CMAS-capable handsets;
- *Multi-language Alerting:* Participating CMS Providers will not be required at this time to transmit alerts in languages other than English;
- *Availability of CMAS alerts while roaming:* Subscribers receiving services pursuant to a roaming agreement will receive alert messages on the roamed upon network if the operator of the roamed upon network is a Participating CMS provider and the subscriber's mobile device is configured for and technically capable of receiving alert messages from the roamed upon network;
- *Preemption of calls in progress:* CMAS alerts may not preempt a voice or data session in progress;
- *Initial implementation:* Participating CMS Providers must begin development and testing of the CMAS in a manner consistent with the rules adopted in the CMAS First Report and Order no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.

4. In adopting these rules, the Commission has taken a significant step towards implementing one of its highest priorities—to ensure that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding disasters and other emergencies irrespective of what communications technologies they use. As the Commission has learned from disasters such as the 2005 hurricanes, such a capability is essential to enable Americans to take appropriate action to protect their families and themselves from loss of life or serious injury. The CMAS First Report and Order also is consistent with the FCC's obligation under Executive Order 13407 to ''adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system,'' and its mandate under the Communications Act to promote the safety of life and property through the use of wire and radio communication.

5. The CMAS First Report and Order is the latest step of the Commission's ongoing drive to enhance the reliability, resiliency, and security of emergency alerts to the public by requiring that

alerts be distributed over diverse communications platforms. In the 2005 EAS First Report and Order, the Commission expanded the scope of the Emergency Alert System (EAS) from analog television and radio to include participation by digital television broadcasters, digital cable television providers, digital broadcast radio, Digital Audio Radio Service (DARS), and Direct Broadcast Satellite (DBS) systems. As noted in the Further Notice of Proposed Rulemaking that accompanied the EAS First Report and Order, 70 FR 71072, November 25, 2005, wireless services are becoming equal to television and radio as an avenue to reach the American public quickly and efficiently. As of June 2007, approximately 243 million Americans subscribed to wireless services. Wireless service has progressed beyond voice communications and now provides subscribers with access to a wide range of information critical to their personal and business affairs. In times of emergency, Americans increasingly rely on wireless telecommunications services and devices to receive and retrieve critical, time-sensitive information. A comprehensive wireless mobile alerting system would have the ability to alert people on the go in a short timeframe, even where they do not have access to broadcast radio or television or other sources of emergency information. Providing critical alert information via wireless devices will ultimately help the public avoid danger or respond more quickly in the face of crisis, and thereby save lives and property.

WARN Act Section 602(a)—Technical Requirements

6. Consistent with section 602(a) of the WARN Act, the Commission adopted ''technical standards, protocols, procedures and other technical requirements * * * necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts.'' Specifically, the rules adopted in the CMAS First Report and Order address the CMS providers' functions within the CMAS, including CMS provider-controlled elements within the CMAS architecture, emergency alert formatting, classes and elements, geographic targeting (geo-targeting) and accessibility for people with disabilities and the elderly. In most cases, the rules adopted are generally based on the CMSAAC recommendations. In such cases, the Commission found that the CMSAAC's recommendations are supported by the record and that adoption of those recommendations serves the public interest and meets the requirements of the WARN Act. For reasons discussed below, however, in some cases, the Commission determined that the public interest requires us to adopt requirements that are slightly different than those recommended by the CMSAAC.

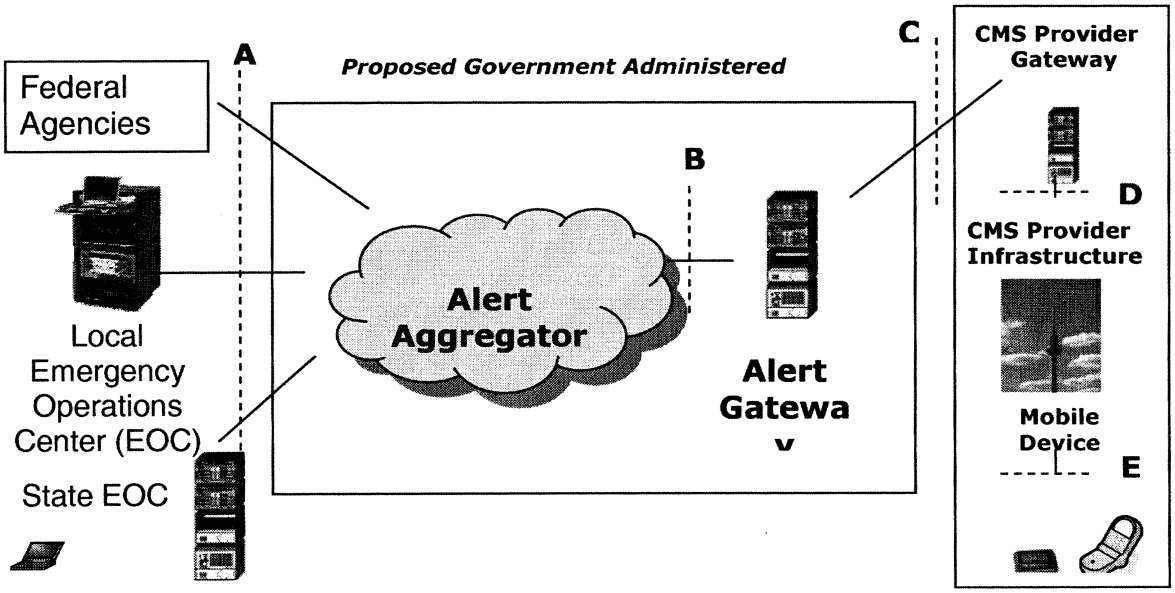
7. *Consideration of the CMSAAC Recommendations.* Several entities representing the wireless industry generally argue in their comments that the Commission has no authority to adopt technical requirements other than those proposed by the CMSAAC and that those must be adopted ''as is.'' The Commission disagrees. The WARN Act does not require that the Commission adopt the CMSAAC's recommendations verbatim. Rather, Congress required the Commission to adopt relevant technical requirements ''based on recommendations of the CMSAAC.'' This indicates that while Congress intended that the Commission give appropriate weight to the CMSAAC's recommendations in the adoption of rules, it did not intend to require the Commission to adopt the CMSAAC's recommendations wholesale, without any consideration for views expressed by other stakeholders in the proceeding or the need to address other significant policy goals. Moreover, adopting the CMSAAC's recommendations in their entirety, without scrutiny, would result in an abdication of the Commission's statutory mandate under the Communications Act to act in the public interest. Clearly the WARN Act did not delegate Commission authority under the Communications Act to an advisory committee; on the contrary, the Commission was to conclude a ''proceeding'' which necessarily implicates notice and an opportunity for public comment, and Commission discretion in adopting appropriate rules and requirements.

8. Commission discretion and flexibility in its adoption of the CMSAAC recommendations is also supported by the policy goal underlying the WARN Act, *i.e.*, the creation of a CMAS in which CMS providers will elect to participate, and which will effectively deliver alerts and warnings to the public. The comments of Ericsson, with which the Commission agrees, support Commission discretion by stating that the technical standards and requirements the Commission adopts for the CMAS should account for an evolving technology landscape. In order to account for changes in the wireless industry and maintain a technologically neutral approach to emergency alerting, the Commission must be able to apply the CMSAAC's recommendations to new technologies and services. A reasonable interpretation of the WARN Act, therefore, is that the Commission has the discretion to evaluate the CMAS technical requirements recommended by the CMSAAC.

CMAS Architecture and CMS Provider Functions

9. In its recommendations, the CMSAAC proposed the following architecture for the CMAS.

Functional Reference Model Diagram



10. Under this proposed reference model, a Federal government entity, the ''Alert Aggregator,'' operating under a ''Trust Model,'' would receive, aggregate, and authenticate alerts originated by authorized alert initiators (*i.e.*, Federal, state, tribal and local government agencies) using the Common Alerting Protocol (CAP). The Federal government entity would also act as an ''Alert Gateway'' that would formulate a 90 character alert based on key fields in the CAP alert sent by the alert initiator. Based on CMS provider profiles maintained in the Alert Gateway, the Alert Gateway would then deliver the alert over a secure interface operated by the CMS provider to another gateway maintained by the appropriate CMS provider (CMS Provider Gateway). Each individual CMS Provider Gateway would be responsible for the management of the particular CMS provider elections to deliver alerts. The CMS Provider Gateway would also be responsible for formulating the alert in a manner consistent with the individual CMS provider's available delivery technologies, mapping the alert to the associated set of cell sites/paging transceivers, and handling congestion within the CMS provider infrastructure. Ultimately, the alert would be received on a customer's mobile device. The major functions of the mobile device would be to authenticate interactions with the CMS provider infrastructure, to monitor for CMAS alerts, to maintain customer options (such as the subscriber's opt-out selections), and to activate the associated visual, audio, and mechanical (*e.g.*, vibration) indicators that the subscriber has indicated as options when an alert is received on the mobile device. As part of its recommended model, the CMSAAC also proposed technical standards defining the functions of the Alert Aggregator, Alert Gateway, CMS Provider Gateway, CMS infrastructure, CMS handsets and various interfaces (*i.e.*, A, B, C, D and E interfaces).

11. In the CMAS NPRM, the Commission sought comment on the CMSAAC's proposed reference architecture, including its standards for defining the various element functions. Although most commenters supported the CMSAAC's proposal, a few objected to the CMSAAC's recommendation concerning the government-administered Alert Aggregator and an Alert Gateway. The Association of Public Television Stations (APTS) suggested that the Commission's role under the WARN Act is limited to adopting protocols to enable mobile services to opt into the Digital Emergency Alert System (DEAS). CellCast asserted that a national Aggregator/Gateway is not required for CMAS implementation and that there are multiple models for alert distribution that do not use such an element. DataFM and the National Association of Broadcasters (NAB) raised concerns that a national aggregator would create a single point of failure that would reduce CMAS resiliency and/or introduce unacceptable performance degradation.

12. According to the CMSAAC, a key element to CMS providers' ability to participate in the CMAS is the assumption of the Alert Aggregator and Alert Gateway functions by a Designated Federal Government Entity. Specifically, the CMSAAC recommended that the CMAS channel all Commercial Mobile Alert Messages (CMAMs) submitted by Federal, State, Tribal and local originators through a secure, Federal government administered, CAP-based alerting framework that would aggregate and hand off authenticated CMAMs to CMS Provider Gateways. The Commission sought comment on this recommendation in the CMAS NPRM. The overwhelming majority of commenting parties supported the CMSAAC's recommendation. Most wireless carriers commenting on the issue stressed that this was essential to CMS providers' participation in the CMAS. ALLTEL, for example, stated that if ''a federal government entity does not assume these roles, wireless service providers are less likely to participate'' in the CMAS because ''in an emergency situation it is imperative that wireless service providers are able to rely on a single source * * * and government officials are more appropriately trained in authenticating and constructing messages.''

13. The Commission adopted the CMSAAC's proposed architecture for the CMAS. It found that the recommended model will facilitate an effective and efficient means to transmit alerts and find that the public interest will be served as such. Contrary to APTS's assertions, nothing in section 602(a) of the WARN Act mandates that the Commission only adopt requirements for CMS providers to opt into DEAS. While the Commission agreed with CellCast that there are other potential models for alert delivery by electing CMS providers, it noted that

none of those alternative solutions received the support of the CMSAAC. Moreover, the Commission noted that the CMSAAC recommendation is the result of consensus among commercial wireless carriers and their vendors, public safety agencies, organizations representing broadcast stations and organizations representing people with disabilities and the elderly, and other emergency alert experts. This consensus was reached after approximately ten months of deliberation. No other party has suggested an alternative that would be superior in meeting the needs of the commercial wireless industry and in ensuring that alerts are received by electing CMS providers and then are transmitted to their subscribers. In fact, both during the CMSAAC deliberations as well as throughout this proceeding, many wireless carriers have indicated that the inclusion of an alert aggregator and alert gateway function is essential to their participation in the voluntary CMAS.

14. Finally, The Commission disagreed with the concerns raised by DataFM and NAB that a national aggregator would necessarily create a single point of failure. While the CMSAAC recommended a single logical aggregator/gateway function, the Commission expected that these functions will be implemented in a reliable and redundant fashion to maximize resiliency. Furthermore, given the volume of alerts expected for the CMAS, the Commission believes that technology for processing alerts will not place a constraint on aggregator/gateway performance. Accordingly, the Commission adopted the architecture proposed by the CMSAAC. As described below, however, the Commission adopted as rules only those CMAS elements within the control of the CMS providers.

15. *Federal Government Role*. The Commission agreed with the CMSAAC and the majority of commenters that a Federally administered aggregator/gateway is a necessary element of a functioning CMAS. While no Federal agency has yet been identified to assume these two functions, the Commission believes that a Federal government aggregator/gateway would offer the CMS providers the best possibility for the secure, accurate and manageable source of CMAS alerts that the WARN Act contemplates.

16. The Commission believes that FEMA, some other entity within DHS, or NOAA may be in the best position to perform these functions. DHS, and more specifically FEMA, traditionally has been responsible for origination of Presidential alerts and administration of the EAS. Moreover, Executive Order 13407 gives DHS primary responsibility for implementing the United States' policy ''to have an effective, reliable, integrated, flexible and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster or other hazards to public safety and well-being.'' By the same token, the Department of Commerce, and more specifically NOAA Weather Radio, as the ''All Hazards'' radio network, acts as the source for weather and emergency information, including natural (such as earthquakes or avalanches), environmental (such as chemical releases or oil spills), and public safety (such as AMBER alerts or 911) warning information.

17. FEMA also played an integral role in the development of the CMSAAC's recommendations. FEMA chaired the Alert Interface Group (AIG), which was responsible for addressing issues at the front-end of the CMAS architecture (*e.g.*, receipt and aggregation of alerts, development of trust model to authenticate alerts from various sources). It also represented the AIG before the CMSAAC Project Management Group (PMG), which coordinated the work of all the other CMSAAC working groups and assembled the CMSAAC recommendations document. In addition, FEMA voted to adopt the CMSAAC recommendations in October 2007, which included CMAS reliance on a single Federal authority to fulfill the gateway/aggregator role.

18. The Commission recognizes that FEMA asserted in its February 2008 comments that limits on its statutory authority preclude the agency from fulfilling the Federal aggregator/gateway functions. Nevertheless, timely identification of a federal agency capable of fulfilling the aggregator/gateway functions recommended by the CMSAAC is essential to bringing the concrete public safety benefits of a CMAS system to the American people. The Commission noted that it was hopeful that any bars that prevent FEMA or some other entity within DHS from fulfilling these roles will be lifted expeditiously. The Commission stated its intent to work with its Federal partners and Congress, if necessary, to identify an appropriate government entity to fulfill these roles, whether that is FEMA, another DHS entity, NOAA or the FCC.

19. *Scope of Order*. Accordingly for purposes of this Order, the Commission proceeded on the assumption that a Federal agency will assume these roles at a future date. The Order is limited to adopting rules governing those sections of the CMAS architecture that are within the control of electing CMS providers. These include rules regarding the CMS Provider Gateway, CMS provider infrastructure, and CMS provider handsets. Specifically, the Commission adopted rules, based on the CMSAAC's recommendations, that require each individual CMS Provider Gateway to be able to receive alerts from the Federal government alert gateway over a secure interface (*i.e.*, ''C Interface''). The CMS Provider Gateway will be required to, among other things: (1) Manage the CMS provider's election to provide alerts; (2) format alerts received in a manner consistent with the CMS provider's available delivery technology; (3) map alerts to the associated set of cell sites/paging transceivers; and (4) manage congestion within the CMS provider's infrastructure. In addition, The Commission adopted rules, based on the CMSAAC's recommendations, requiring the CMS infrastructure to, among other things: (1) Authenticate interactions with the mobile device; (2) distribute received CMAS alert messages to the appropriate set of cell sites/paging transceivers for transmission to the mobile device; and (3) transmit the CMAS alert message for each specified cell site/pager transceiver.

20. The Commission adopted the CMSAAC's recommendations regarding capabilities of the mobile device including that it: (1) Authenticate interactions with the CMS provider infrastructure; (2) maintain configuration of CMAS alert options; and (3) present received CMAS alert content to the subscriber. In addition, as explained below, the Commission adopted requirements for the mobile device to ensure that people with disabilities are able to receive CMAS alerts. The Commission also adopted the CMSAAC's recommendation that CMAS alerts not preempt ongoing voice or data sessions.

21. In keeping with the Commission's policy to promote technological neutrality, it declined to adopt rules governing the communications protocols that the CMS providers must employ for communications across the D or E interfaces as identified in the architecture. The Commission agreed with the CMSAAC that no specific protocols should be required for the D and E interface, but rather that CMS providers should be allowed to retain the discretion to define these protocols in conjunction with their overall network design and with the mobile device vendors. Both of these interfaces lie entirely within the control of the

CMS providers and any implementation decisions there will have no impact on CMAS ability to satisfy the system requirements the Commission sets forth elsewhere in this Order. For example, while the Commission includes requirements on the type of alert information that must cross the D and E interfaces to enable CMAS alerts on mobile devices, it chose to remain silent as to the precise communications protocol that a CMS provider uses to convey this information to the mobile device. This approach gives the CMS providers maximum flexibility to leverage technological innovation and implement the CMAS in a cost effective manner.

22. The Commission also adopted rules requiring, per the CMSAAC's recommendation, that electing CMS providers assemble individual profile information to provide to the Authorized Federal Government Entity, once that entity is identified. The Commission believes that electing CMS providers expect to assemble this information, and by adopting this requirement now, it is providing direction to potential Alert Gateway providers.

23. The CMSAAC recommended detailed technical protocols and specifications for the Alert Aggregator/Gateway entity and the CMS providers to employ for the delivery of alerts over the various interfaces (*i.e.*, A, B and C interfaces) in the Reference Model. Specifically, section 10 of the CMSAAC recommendations proposed requirements that Alert Initiators must meet to deliver CMAS alerts to the Alert Aggregator, and that the Alert Gateway must meet to deliver CMAS alerts to the CMS Provider Gateway. The CMSAAC also recommended CAP-based mapping parameters.

24. The Commission supports the technical protocols and specifications for the delivery of alerts recommended by the CMSAAC in this section. Electing CMS providers could use these technical protocols and specifications to design their internal systems that would enable compliance with the rules the Commission adopts in this docket. The Commission declines, however, to codify these protocols and specifications in this Order. It believes that these protocols offer a significant guidance to CMAS participants as they further develop the final protocols and interface for the CMAS, but until an Alert Aggregator/Gateway entity is determined, additional refinements and revisions of these protocols and specifications are inevitable. Accordingly, the Commission concludes that final determination of these interface protocols is better left to industry standards organizations. The Commission noted that it will revisit this matter in the future if Commission action in this area is indicated.

General CMAS Requirements

25. In this section, the Commission establishes the basic regulatory framework of the new CMAS. Specifically, it adopts technologically neutral rules that address, among other things, the scope of CMAS alerts, geo-targeting and alert accessibility for people with disabilities and the elderly.

26. *Scope and Definition of CMAS Alerts*. The WARN Act requires the Commission to enable commercial mobile alerting capabilities for ''emergency'' alerts, but does not define what may comprise an emergency. Accordingly, in the CMAS NPRM, the Commission sought comment on the appropriate scope of emergency alerts, including whether and to what extent alerts should be classified. The Commission specifically asked parties to address whether it should implement the CMSAAC's recommendation to specify three alert classes: (1) Presidential Alert; (2) Imminent Threat Alert; and (3) Child Abduction Emergency or AMBER Alert. For the reasons stated below, the Commission finds that the public interest will be best served by its adopting these three alert classes, which it defines below.

27. The Commission agrees with the majority of commenters that the three classes of alert recommended by the CMSAAC achieves the best balance between warning of imminent threat to life and property with the current technical limits that CMS provider systems face in delivering timely, accurate alerts. Alert Systems however argues that the Commission should include additional classes of alerts, such as traffic advisories. The Commission finds that inclusion of such alerts would be inconsistent with the intent of Congress, expressed throughout the WARN Act, that the Commission enable an ''emergency'' alerting system. The Commission believes that if the public were to receive commercial mobile alerts that do not relate to bona fide emergencies, there would be a serious risk that the public would disregard mobile alerts or possibly opt not to receive anything but Presidential alerts. The Commission also notes that, given the current technical capabilities of CMS providers to deliver emergency alerts, it is possible that if too many alerts are injected into a CMS provider's system in a very brief period, vital messages could be delayed. Accordingly, the Commission rejects arguments to broadly define eligible alert classes beyond those specified here.

28. *Presidential Alerts*. Section 602(b)(2)(E) of the WARN Act authorizes participating CMS providers to allow device users to prevent the receipt of alerts or classes of alerts ''other than an alert issued by the President.'' Congress thus intended to afford Presidential Alerts the highest priority. Affording Presidential Alerts the highest priority also will enable the Secretary of Homeland Security to meet his/her obligation, under Executive Order 13407, to ''ensure that under all conditions the President of the United States can alert and warn the American people.'' Accordingly, electing CMS providers must transmit such alerts and assign the highest priority to any alert issued by the President or the President's authorized designee. Further, Presidential Alerts must be transmitted upon receipt by a CMS provider, without any delay, and therefore will preempt any other pending alert. The Commission notes that due to the initial 90-character text message protocol that it is adopting below for the first generation CMAS, it is possible that a Presidential Alert may direct recipients to other sources, possibly taking the form recommended by the CMSAAC: ''The President has issued an Emergency Alert. Check local media for more details.''

29. *Imminent Threat Alerts*. The Commission notes that virtually all commenting parties support adoption of the CMSAAC's recommendation to define an Imminent Threat Alert class. This alert class is narrowly tailored to those emergencies where life or property is at risk, the event is likely to occur, and some responsive action should be taken. Specifically, an Imminent Threat Alert must meet separate thresholds regarding urgency, severity, and certainty. Each threshold has two permissible CAP values.

- *Urgency*. The CAP ''urgency'' element must be either Immediate (*i.e.*, responsive action should be taken immediately) or Expected (*i.e.*, responsive action should be taken soon, within the next hour).
- *Severity*. The CAP ''severity'' element must be either Extreme (*i.e.*, an extraordinary threat to life or property) or Severe (*i.e.*, a significant threat to life or property).
- *Certainty*. The CAP ''certainty'' element must be either Observed (*i.e.*, determined to have occurred or to be ongoing) or Likely (*i.e.*, has a probability of greater than fifty percent). That is, the event must have occurred, or be occurring (Observed), or be more likely to occur than not (Likely).

30. The Commission finds that the transmission of these imminent threat alerts is essential to a useful CMAS. The CMSAAC recommended such action and the commenting parties overwhelmingly support this conclusion. As T-Mobile correctly states, CMAS alerts are not appropriate for warning the public about minor events. Subscribers are more likely to opt out if they are bombarded by minor notices, and may fail to notice a truly serious alert. Also, inclusion of minor events would be an unnecessary burden on the CMS provider infrastructure. Accordingly, the Commission finds it appropriate to require participating CMS providers to transmit Imminent Threat Alerts.

31. *Child Abduction Emergency/ AMBER Alerts.* There is broad support in the record for adoption of the CMSAAC's recommendation to specify a third alert class, Child Abduction Emergency or AMBER Alert. *There are four types of AMBER Alerts:* (1) Family Abduction, (2) Nonfamily Abduction, (3) Lost, Injured, or Otherwise Missing, and Endangered Runaway. AMBER plans are voluntary partnerships between law enforcement agencies, broadcasters and CMS providers to activate an urgent bulletin in the most serious child abduction cases, and AMBER alerts are issued only where an AMBER plan has been duly established. The Commission also notes that a number of CMS providers currently transmit AMBER Alerts using Short Message Service (SMS) technology, and applauds their potentially life-saving efforts in this regard.

32. In 2006, 261 AMBER Alerts were issued in the United States involving 316 children. Most of these alerts were issued on an intrastate basis. Of the 261 AMBER Alerts issued in 2006, 214 cases resulted in a recovery, 53 of which were resolved as a direct result of an AMBER Alert being issued. Based on the limited number of AMBER alerts and their confined geographic scope, the Commission does not expect such alerts to be overly burdensome to CMS providers that participate in the CMAS. Moreover, because of the efficacy of AMBER Alerts, the Commission finds that the public interest in the safety of America's children will be well served by the provision of AMBER Alerts by the wireless industry. Accordingly, the Commission requires participating CMS providers to transmit AMBER alerts.

33. *Technologically Neutral Alert System.* The CMSAAC recommended that CMS providers that elect to participate in the CMAS should ''not be bound to use any specific vendor, technology, software, implementation, client, device, or third party agent, in order to meet [their] obligations under the WARN Act.'' The Commission agrees. As SouthernLINC notes, participating CMS providers should be able to choose the technology that will allow them to best meet the emergency alerting needs of the American public. Consistent with the Commission's well-established policy of technologically-neutral regulation of the wireless telecommunications industry, it believes that CMS providers and equipment manufacturers are in the best position to select and incorporate the technologies that will enable them to most effectively and efficiently deliver mobile alerts. Accordingly, the Commission does not limit the range of technologies that electing CMS providers may deploy to participate in the CMAS. In reaching this conclusion, the Commission balances the alerting needs of the public and the capabilities of electing CMS providers and the Commission's mandate under section 602(a) of the WARN Act to enable the provision of emergency alerts. The Commission emphasizes that the WARN Act does not require the establishment of any specific technology to be used for the CMAS.

34. CMS providers are in various stages of readiness to participate in the CMAS. Paging carriers already provide point to multipoint services, using technologies such as ReFLEX and POCSAG (Post Office Code Standardization Advisory Group), to reach many subscribers at the same time and therefore appear well-positioned to participate in CMAS. However, as the American Association of Paging Carriers notes, it may not be feasible for paging carriers to confine their alerts to either county-wide or sub-county distribution. Further, cellular, PCS, and SMR service providers, report that they have not deployed an emergency alerting capability that satisfies all requirements in the CMSAAC recommendations and that is currently available for the mass transmission of alerts. The Commission notes that many of the requirements that it adopts are intended to apply to a first generation text-based alerting service. Other service profiles, such as streaming audio and video, are in their early developmental stages and thus not ripe for implementation by the Commission. The Commission foresees that as CMS providers gain experience with these and other alerting technologies, they may well be incorporated into future alerting system deployments.

35. Although the CMSAAC found that point-to-point technologies may not be well suited for mass alerting, the Commission will not prohibit their use if a CMS provider can otherwise meet the requirements that the Commission establishes. Short Message Service (SMS) text messaging is available to most cellular, PCS, and SMR subscribers and is currently used by some municipalities and other local jurisdictions to provide emergency alerts on an opt-in basis. The Commission recognizes, however, that SMS may not be a desirable solution for the widespread dissemination of alerts to the public because the mass delivery of SMS-formatted alerts could degrade network performance and delay alert delivery. Despite these potential drawbacks, SMS text messaging may offer a viable, short-term delivery method for electing CMS providers that do not yet have a point-to-multipoint text messaging capability.

36. The CMSAAC noted that technologies such as MediaFLO and DVB–H ''may provide supplemental alert information,'' but recommended that they should not be considered as part of the CMAS. The Commission's goal in this proceeding is to enable the broadest possible voluntary participation in the CMAS, and it will not foreclose the possible deployment of these or other innovative technologies as a means of participating in the nascent CMAS. The public interest is best served by not circumscribing the range of technologies that CMS providers may elect to deploy to meet the alerting needs of the American public.

37. Several parties express support for an FM-based CMAS solution such as that provided by ALERT–FM and Global Security Systems. The CMSAAC however considered the costs and benefits of Radio Broadcast Data System (RBDS) and other FM-based alert and warning solutions, and found them to be infeasible for the CMAS. Moreover, a number of parties have expressed reservations about these technologies. Nonetheless, in keeping with its overall policy to maintain technological neutrality, the Commission does not require or prohibit the use of ALERT–FM, RBDS or similar systems as the basis of the CMAS.

38. The Commission also strongly encourages fair, reasonable, and nondiscriminatory Intellectual Property Rights (IPR) licensing in the context of the CMAS. It agrees with the CMSAAC that the technical standards, protocols, procedures, and related requirements that the Commission adopts pursuant to section 602(a) of the WARN Act should be standardized in industry bodies that have well defined IPR policies. The Commission declines, however, to compel all CMSAAC participants ''to

provide written assurance to the Commission that, if and insofar as one or more licenses may be required under any of their respective IPRs that are technically essential for purposes of implementing or deploying CMAS, the rights holders shall license such IPR on a fair, reasonable and nondiscriminatory basis for those limited purposes only.'' The Commission also declines to require ''all participants in the public comment process on th[e] CMAS Architecture and Requirements document'' to make such a written assurance. These requests are outside the scope of section 602(a) of the WARN Act.

39. The CMSAAC made a number of additional recommendations that the Commission concludes are outside the scope of its mandate under section 602(a) of the WARN Act to adopt ''technical standards, protocols, procedures, and other technical requirements,'' to enable voluntary commercial mobile alerting. Specifically, the CMSAAC submitted recommendations regarding the applicability of requirements for location, number portability and the Communications Assistance for Law Enforcement Act (CALEA). The CMSAAC also submitted recommendations on whether CMS providers may utilize the technical requirements adopted herein for other services and purposes and whether CMS providers may recover certain costs related to the development of the CMAS. The Commission finds that these issues are outside the scope of section 602(a) of the WARN Act and, therefore, does not address these issues in the Order.

40. The CMSAAC recommended that, to the extent practicable, ''Federal, state, tribal, and local level CMAS alert messages [should] be supported using the same CMAS solution.'' The Commission agrees and believes that a uniform approach to implementation of the CMAS will be inherently more cost effective, more technologically consistent and thus more likely to facilitate participation by small and rural CMS providers. Further, the Commission agrees that electing CMS providers should not be required to support alerting on mobile handsets manufactured for sale to the public prior to a CMS provider's initiation of the CMAS alerting service. In a subsequent order, the Commission will address how participating CMS providers may sell such non-compliant handsets consistent with the requirement under section 602(b) of the WARN Act that they disclose ''at the point of sale of any devices with which its commercial mobile service is included, that it will not transmit such alerts via the service it provides for the device.'' Finally, the Commission agrees that electing CMS providers should have discretion regarding whether certain devices, such as laptop wireless data cards, will support alerting capabilities.

CMAS Message Elements and Capabilities

41. *Required Alert Message Elements.* The CMSAAC recommended that emergency alert messages follow the same general format of National Weather Service alert messages, subject to a 90-character text limitation. Specifically, the CMSAAC recommended that for initial CMAS deployments, messages should include five elements in the following order:

- Event Type or Category
- Area Affected
- Recommended Action
- Expiration Time (with time zone)
- Sending Agency

42. The CMSAAC proposed this format to facilitate CAP value field mapping to text. It also noted that the format would likely evolve as experience is gained by alert initiators and by electing CMS providers. In the CMAS NPRM, the Commission sought comment on the five elements and asked parties to address whether the elements are consistent with accepted industry practices for emergency alerts.

43. There is broad support in the record for standardization of alert messages and adoption of the five recommended message elements. T-Mobile explains that the format ''is designed to ensure that the most critical information is succinctly and clearly communicated in a manner most compatible with the technical attributes of wireless networks.'' Purple Tree Technologies also supports the five message elements, but urges that event type and area affected be the only required elements, with others optional if space permits. Based on the Commission's review of the record, it finds that on balance the five message elements identified above will enable standardization of alerting messages and adopts them. The Commission rejects Alert Systems' claim that the element for ''area affected'' should be reconsidered based on its hypothesis that ''visitors and newcomers to areas often do not recognize geographic landmarks in warning messages.'' A biohazard or flash flood warning, for example, would not enable the public to avoid a lethal hazard without appropriate area affected information. The Commission also expects that as CMAS providers eventually deploy technologies capable of messages of more than 90 characters, additional alert message elements will be implemented.

44. In the CMAS NPRM, the Commission also sought comment on whether alert messages should include telephone numbers, URLs or other response and contact information, including any related network impacts. The CMSAAC advised against inclusion of URLs or telephone numbers because such information would encourage mass access of wireless networks. The California Public Utility Commission (CAPUC) supports inclusion of a sixth message element for URLs, if feasible. AT&T (and many commenting parties) note that inclusion of a URL or telephone number in an emergency message, some of which might be delivered to tens of thousands of users in a matter of seconds, could lead to unacceptable network congestion and, in extreme cases, network failure. The Commission finds that mandating URLs or telephone numbers in an emergency alert could exacerbate wireless network congestion at a time when network traffic is already dramatically increasing as individuals contact police, fire, and rescue personnel, as well as their loved ones. The Commission therefore will not require participating CMS providers to accept or transmit any alert message that contains an embedded URL or telephone number.

45. *CMAS Generation of Free Text Alert Messages.* In the CMAS NPRM, the Commission sought comment on the CMSAAC's recommendation that the Alert Gateway automatically generate messages by extracting information from specified fields of a CAP-formatted message, SAME codes, or free-form text, which would then be transmitted across Reference Point C to electing CMS providers. The CMSAAC recommended this approach for initial system deployments. The Commission also sought comment on the CMSAAC's recommendation to allow the generation of free text for Presidential and AMBER alert messages. While numerous parties in this proceeding support adoption of the CMSAAC recommendations in full, few address the specific mechanics of generating alert messages via the Alert Gateway. AT&T states that proposals for automatic generation of alert text ''merit further investigation, but responsibility for the content of alerts should remain with initiators and the federal government—not wireless carriers.'' The Commission agrees with AT&T and other parties that electing CMS providers should act as a conduit for messages, the content of which is fixed before transmission to a CMS provider.

46. CellCast argues that the Commission should ''ignore'' the CMSAAC recommendations regarding alert generation, asserting that message generation is beyond its mandate under the WARN Act. The mechanisms for generating messages at the Alert Gateway are undefined currently and may be subject to implementation by the federal entity selected to administer the Alert Gateway. Nonetheless, the Commission supports the CMSAAC's recommended approach of allowing the Alert Gateway to create messages using CAP fields and SAME codes. Specifically, the Commission believes that this approach would enable the provision of consistent and accurate messages to the public, while facilitating future enhancements to the Alert Gateway.

47. The Commission also agrees with the CMSAAC that automatic generation of messages via CAP fields and SAME codes may not always provide sufficient flexibility to alert initiators to tailor messages for emergencies that may fall with the Imminent Threat Alert category. A message with a translated event code of ''security warning,'' for example, may not provide adequate information about a shooting incident on a college campus. A more apt warning might be ''a shooting has occurred on the north campus,'' with directions to ''stay indoors.'' The Commission thus believes that the public interest would be served if the CMAS architecture accommodates free-form text messaging, subject to the 90-character text limit that it adopts and its determination that electing CMS providers will generally not be obligated to accept or transmit any alert message that includes an embedded URL or phone number. The Commission also agrees with the CMSAAC that free-form text should be included as a CAP message parameter.

48. Finally, the Commission concurs with the CMSAAC that automatic text generation at the Alert Gateway would be impractical for Presidential or AMBER Alerts, both of which are likely to be highly fact specific. As the CMSAAC noted, the efficacy of a particular AMBER Alert hinges on specific information such as a description of a vehicle, abductor, or missing child. Accordingly, the Commission finds that law enforcement authorities should have the ability to formulate unique message text for the dissemination of AMBER Alerts via the CMAS. The Commission envisions that such free text messages would be presented to the Alert Gateway in a free text CAP field. In the event of a Presidential Alert, it agrees with the CMSSAC that, until such time as electing CMS providers are able to transmit messages longer than 90 characters, the Alert Gateway may employ a generic statement such as ''The President has issued an emergency alert. Check local media for more details.''

49. *Geo-targeting CMAS Alerts*. The CMSAAC recommended that ''to expedite initial deployments of CMAS an alert that is specified by a geocode, circle or polygon'' should ''be transmitted to an area not larger than the CMS [provider's] approximation of coverage for the county or counties with which that geocode, circle, or polygon intersects.'' The Commission, based on the substantial record before it, and for the reasons stated below, requires electing CMS providers to geographically target (geo-target) alerts accordingly. The Commission notes that radio frequency (RF) propagation areas for some paging systems and cell sites may exceed a single county, and will permit geo-targeting that exceeds county boundaries in these limited circumstances.

50. Congress recognized the importance of geo-targeting alerts in the WARN Act. Specifically, in section 604 of the WARN Act, Congress directed the Under Secretary of Homeland Security for Science and Technology, in consultation with the National Institute of Standards and Technology (NIST) and the FCC, to establish a research program for ''developing innovative technologies that will transmit geographically targeted emergency alerts to the public.'' The Commission stands ready to work with DHS and NIST to facilitate this important undertaking. The Commission fully expects that as more refined and cost effective geo-targeting capabilities become available to electing CMS providers, they will voluntarily elect to target alerts more granularly. Several CMS providers have indicated their intention to geo-target alerts below the county level and the Commission strongly encourages them to do so. As T-Mobile notes, electing CMS providers should be free to target more specifically, subject to the liability protections of the WARN Act.

51. In the CMAS NPRM, the Commission sought comment on what level of precision it should require for geo-targeting, considering the CMSAAC's recommendation for county-level geo-targeting. The CMSAAC recognized ''that it is the goal of the CMAS for CMS providers to be able to deliver geo-targeted alerts to the areas specified by the Alert Initiator.'' Based upon current capabilities and to expedite initial deployments, the CMSAAC recommended targeting ''an area not larger than the CMS [provider's] approximation of coverage for the county or counties with which [a transmitted] geocode, circle, or polygon intersects.'' The CMSAAC recommended that providers should be allowed (but not required) to deliver alerts to areas smaller than a county, using Geographic Names Identification System (GNIS) codes, polygon, or circle information to identify a predefined list of cell sites/paging transceivers within the alert area.

52. Several parties however urge us to mandate sub-county targeting. Alert Systems claims that disaster managers often require greater geographic granularity than that permitted by CAP and the CMSAAC recommendations. Purple Tree Technologies asserts that sub-county targeting is ''possible with cell broadcast,'' and that there are few technical hurdles preventing granular alerts. Acision and CellCast both contend that cell broadcast technology would allow for targeting to the individual cell level. DataFM claims its technology could target ''specific geographic areas without regard to the location of its transmitters.''

53. The National Emergency Number Association (NENA) favors targeting smaller areas, noting that some counties are very large and that alert originators often need to target precisely. NENA asserts that targeting messages to the block level (similar to emergency telephone notification systems) would be ''ideal,'' but recognizes this is not possible. The CAPUC argues that county targeting would be overbroad for most emergencies, and urges ZIP-code level targeting. The Commission notes that there are more than 40,000 active ZIP codes in the United States, and many of these are assigned to specific addresses. The CAPUC does not explain how ZIP code targeting could be implemented.

54. The weight of the record supports county-level targeting as recommended by the CMSAAC. CTIA, TIA and 3G Americas urge us to implement county-level targeting, with optional granularity, to encourage expeditious deployment of alerting capabilities. T-Mobile agrees that electing CMS providers should not be required to target alerts to areas smaller than a county, noting that given current technological limitations, many carriers would be unable to achieve more specificity. Alltel also supports county-level targeting, but states that it intends to target more granularly.

55. MetroPCS notes that for smaller targeting areas, electing CMS providers would have to more precisely control the delivery of messages by the base

stations serving a given targeted area than is currently economically feasible. Similarly, The National Telecommunications Cooperative Association (NTCA) states that requiring electing rural CMS providers to send alerts to sub-county areas may be too expensive and may reduce the incentive to participate in the CMAS. The American Association of Paging Carriers (AAPC) opposes county-level targeting, noting that it may not be feasible for some paging providers to confine alerts to the county level, and that they would target alerts to the extent permitted by their networks.

56. Based on the foregoing, and subject to the limited exception discussed below, the Commission concludes that it would be premature for it generally to require targeting of alerts more precisely than the county level. The Commission specifically notes that county-level targeting is consistent with the current practices of the National Weather Service, which is expected to originate many CMAS alerts. While some commenters argue that cell broadcast and perhaps other technologies could support more granular targeting, the record indicates that not all CMS providers may employ cell broadcasting for their delivery of CMAS. Further, while several vendors urge us to mandate sub-county targeting, at this point the Commission finds that the public interest is best served by enabling participating CMS providers to determine which technologies will most efficiently and cost effectively allow them to target alerts more precisely than the county level.

57. Accordingly, the Commission generally requires CMS providers that elect to participate in the CMAS to geographically target emergency alerts to the county level. In adopting this rule, the Commission recognizes the concerns of many CMS providers that face technical limitations on their ability to geo-target alerts to areas smaller than a county. In those limited circumstances where the propagation area of a paging system or cell site exceeds a single county, the Commission will permit the RF signal carrying the alert to extend beyond a county's boundaries. Electing CMS providers may determine which network facilities, elements, and locations will be used to transmit alerts to mobile devices. Regarding the CMSAAC recommendation that, until such time as emergency alerts can be delivered to areas smaller than a county in real-time (*i.e.*, dynamic geo-targeting), certain urban areas with populations of greater than 1 million or with specialized alerting needs be identified for more precise geo-targeting, the Commission will address this recommendation once an entity has been identified to provide the Alert Aggregator and Gateway functions.

58. *Meeting the Needs of Users, Including Individuals with Disabilities and the Elderly*. Section 603(b)(3)(F) of the WARN Act required that the CMSAAC include representatives of national organizations representing people with special needs, including individuals with disabilities and the elderly. Because the WARN Act directed the CMSAAC to submit recommendations to the Commission ''as otherwise necessary to enable electing CMS providers to transmit emergency alerts to subscribers,'' the CMSAAC concluded, and the Commission agrees, that Congress intended to include the elderly and those with disabilities among the class to which electing CMS providers are to deliver alerts. Accordingly, the Commission concludes that CMAS access to those with disabilities and the elderly falls within its obligation under section 602(a) of the WARN Act, and thus seek to ensure that commercial mobile alerts are accessible to all Americans, including individuals with disabilities and the elderly.

59. The CMSAAC recommended that the needs of individuals with disabilities and the elderly be addressed by, *inter alia*, the inclusion of a common audio attention signal, and a common vibration cadence, on devices to be used for commercial mobile alerts. The CMSAAC recommended that both functions be distinct from any other device alerts and restricted to use for commercial mobile alerting purposes. The CMSAAC further noted that these features would benefit not only individuals with disabilities and the elderly, but also subscribers more generally.

60. For devices with polyphonic capabilities, the CMSAAC recommended that the audio attention signal should consist of more than one tone, in a frequency range below 2 kHz and preferably below 1 kHz, combined with an on-off pattern to make it easier for individuals with hearing loss to detect. For devices with only a single frequency capability, the CMSAAC recommended an audio attention signal below 2 kHz. The CMSAAC also recommended that the unique vibration cadence should be noticeably different from the default cadence of the handset. The CMSAAC further recommended that if a device includes both the audio and vibration functions, simultaneous activation of both functions should not be required and that configuration should be determined by end users.

61. In the CMAS NPRM, the Commission sought comment on the CMSAAC recommendations, including any technical or accessibility requirements that the Commission should adopt to ensure that commercial mobile alerts will be received by individuals with disabilities and the elderly. The Commission asked whether attention signals should be required for all users. It also noted that the CMSAAC recommended that alert initiators use clear and simple language whenever possible, with a minimal use of abbreviations and the ability to recall alert messages for review—and sought comment on these recommendations within the context of accessibility for individuals with disabilities and the elderly.

62. Nearly all commenting parties support the CMSAAC's recommendations for addressing the needs for individuals with disabilities and the elderly. AT&T, for example, states that adoption of the CMSAAC's recommendations for a common audio signal and vibration cadence will ''allow for the immediate identification of emergency alerts'' and foster ''the widest possible distribution of alerts'' to the public. Alert Systems likewise notes that ''[u]rgency coding of messages is vital,'' and that caretakers and operators of certain industrial facilities in particular ''need unique alert tone patterns/amplitudes to quickly reprioritize activities.''

63. The Wireless Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC) supports adoption of a common audio attention signal, and recommends that the Commission adopt the existing 8-second EAS attention signal for all users, asserting that it provides the necessary period of time to alert individuals with hearing disabilities. The Wireless RERC also supports adoption of a common vibration cadence, and states that electing CMS providers should provide clear instructions on the alert capabilities of their devices, including labels identifying mobile devices suitable for persons with audio and visual disabilities. AAPC supports the CMSAAC recommendations, but states that legacy devices should not be required to support such functions. CAPUC adds that although the CMSAAC was required to issue recommendations on wireless alerts exclusively, the Commission should consider ensuring interoperability with wireline devices for individuals with disabilities and the elderly, noting that

some such users may not have access to wireless devices. DataFM notes that it currently has equipment for text-to-speech for the blind and strobe light warnings for the deaf, and would employ audio alerts and vibration alerts for portable devices.

64. Although there is near unanimous support of the CMSAAC's recommendations for addressing the needs of individuals with disabilities and the elderly, several parties argue that no additional requirements are necessary. MetroPCS claims that the handsets that will be used to receive mobile alerts are already subject to disability access requirements, and any additional requirements may raise costs, thereby discouraging CMS provider participation. CellCast argues that no changes to CMS provider networks should be required, noting that some mobile devices can be configured to enable the elderly or blind to hear an audio conversion of the message using text-to-speech technologies.

65. The Commission agrees with the majority of those commenting and the CMSAAC that it is vital that the Commission ensures access to commercial mobile alerts by individuals with disabilities and the elderly. The Commission disagrees with the premise articulated by some commenters that merely because some device manufacturers already include accessibility features for receipt of mobile alerts, no requirements are needed to ensure access to mobile alerts for individuals with disabilities and the elderly.

66. Accordingly, to address the needs of these user groups and the needs of users more generally, the Commission will require that participating CMS providers include both a common vibration cadence and a common audio attention signal on any device offered to the public for reception of commercial mobile alerts. Specifically, as the CMSAAC recommended, the Commission specifies a temporal pattern for the audio attention signal of one long tone of two (2) seconds, followed by two short tones of one (1) second each, with a half (0.5) second interval between the tones. The Commission also requires that the entire sequence be repeated twice with a half (0.5) second interval between repetitions. For devices with polyphonic capabilities, the Commission adopts the CMSAAC's recommendation that the audio attention signal consist of the two EAS tones (853 Hz and 960 Hz). For devices with a monophonic capability, the Commission requires that a universal audio attention signal be of 960 Hz (the higher frequency EAS tone).

67. The Commission also seeks to facilitate recognition of alerts for individuals that may have a hearing disability (or who may have muted the audio attention signal on their device), and therefore adopts the same temporal pattern for the vibration cadence as the CMSAAC recommended that the Commission specify for the audio attention signal. The Commission strongly encourages CMS providers to coordinate with device manufacturers to utilize existing technologies to comply with these requirements as soon as possible.

68. The Commission recognizes that incorporating capabilities for a common audio attention signal and a common vibration cadence on the many devices that it expects to be offered to the public will take time to develop and implement successfully. However, the Commission believes that assuring full access for all Americans is sufficiently important that equipment may not be considered CMAS compliant unless it includes both the common audio attention signal and the vibration cadence adopted in this Report and Order. Further, both functions must be distinct from any other incoming message alerts and restricted to use for CMAS alerting purposes. Finally, simultaneous activation of both the audio attention signal and vibration cadence is permissible.

69. *Output Mode/Display*. The CMSAAC issued several recommendations regarding the output mode/display of mobile devices. Specifically, the CMSAAC recommended that CMAS-enabled mobile devices should employ display fonts that are easily readable with recognizable characters, citing three typeface examples. MetroPCS notes that certain accessibility requirements already apply to CMS providers, and that CMAS-enabled mobile devices will therefore accommodate certain disabilities. CellCast adds that the development of mobile devices is highly competitive and flexible enough to meet the needs of all users including those with special needs. Although the Commission agrees with the CMSAAC that ''the goal in font selection is to use easily recognizable characters,'' it does not want to constrain the ability of CMS providers and manufacturers of devices to implement display modes that they find will best meet the needs of people with disabilities and other users. Accordingly, the Commission does not limit the display of CMAS alerts to a particular font or character set.

70. Text-to-speech (TTS) enabled wireless mobile devices are becoming increasingly common, and the Commission strongly encourages all participating CMS providers to offer devices with such capabilities so that blind individuals and those with severe visual impairments can obtain the public safety benefits of commercial mobile alerts. The Commission notes that many of the requirements that it adopts for the first generation of CMAS are intended to enable the provision of text-based alerts to the public. Although the Commission envisions that the CMAS will evolve to include audio and video service profiles, it finds that at this initial stage of the CMAS, it would be premature to address the CMSAAC's recommendations regarding output mode/displays for such future service profiles.

71. *Message Retransmission*. The Commission agrees with the CMSAAC that alerts should be retransmitted periodically to an affected area until their specified expiration. Periodic retransmission of alerts is vital because some individuals, particularly motorists, may enter an alert area after initial transmission of an alert. Others may miss the initial alert because of an ongoing call (as explained below, alerts may not preempt a call in progress), or because they had their mobile device turned off or muted when an alert was first transmitted. As the CMSAAC noted, the optimal frequency of alert retransmission requires a balancing of many factors, including the capabilities of a CMS provider's delivery technology and end users' handsets, the number of ongoing active alerts, device battery life, and impacts on network call and data processing. The CMSAAC recommended that each CMS provider should determine how often an alert will be retransmitted based on such considerations. The Commission agrees with this assessment and adopts this recommendation as reasonable for the initial implementation of the CMAS. As the system is deployed, the Commission may wish to revisit the issue to see if a consistent, industry-wide alert retransmission interval would be more appropriate.

72. *Multi-Language CMAS Alerting*. The WARN Act required the CMSAAC to submit recommendations to the Commission regarding ''the technical capability to transmit emergency alerts by electing commercial mobile providers to subscribers in languages in addition to English, to the extent practical and feasible.'' In the CMAS NPRM, the Commission sought comment on the technical feasibility of providing commercial mobile alerts in

languages in addition to English, including how the provision of alerts in multiple languages could affect the generation and distribution of messages on a local, state, and national level. Based on the record before us, the Commission finds that it would be premature to require CMS providers to transmit alerts in languages in addition to English. As explained below, the Commission agrees with the CMSAAC and those commenters that state that further technical study is needed to enable the provision of alerts in multiple languages.

73. The CMSAAC provided recommendations regarding multi-language alerting in section 5.7 of its report. The CMSAAC specifically ''recognized that there is a strong desire for the CMAS to support Spanish in addition to English,'' but found that supporting multiple languages in the first generation of CMAS could adversely impact system capacity and increase message latency. It noted that while Spanish and English would cover 99 percent of all U.S. households, there are more than 37 languages in the United States that exceed 1 percent of households on a local level. The CMSAAC stated that delivering CMAS alerts in these languages would require mobile devices capable of supporting at least 16 different character sets. The CMSAAC also stated that some languages require two bytes per character rather than one byte per character for English, thereby further limiting message length. The CMSAAC found that the technical feasibility of providing alerts in languages in addition to English is a highly complex issue requiring further study. Finally, the CMSAAC noted that the CMAS architecture can support language extensions and recommended that this capability be reserved for future study.

74. Several parties disagree that the technical feasibility of providing alerts in languages in addition to English requires further study, and urge us to mandate the provision of alerts in multiple languages now. The CAPUC notes that ''roughly 30.1 percent of California's population has limited English proficiency,'' and that the State ''uses different languages for different types of communications * * * [including] Spanish, Cantonese, Mandarin, Tagalog, Vietnamese, Korean, Farsi, Arabic, and Hmong.'' The CAPUC asserts ''that various commercial alert service providers represent that they can provide alerts in six different languages,'' but does not identify these service providers. There is no evidence in the record before us however of any CMS provider having the current capability to deliver alerts in six different languages, and the Commission therefore cannot adopt CAPUC's request that the Commission require transmission of alerts in a minimum of six languages.

75. CellCast and One2many also urge us to implement multiple language alerting. CellCast notes that pending standards under the ITU for Message Indicators (MIs) can facilitate either the dedication of discrete MIs for specific languages, or the rejection of messages in undesired languages via the message preamble. CellCast suggests that such standards would provide clear direction for international harmonization of emergency alerting systems and handsets. CellCast further argues that the potential latency of multiple messages in sequential languages would be indiscernible to a mobile user and should not impact that user's ability to react to an emergency. CellCast claims that the delivery of multi-language alerts would not add any new burden on the Alert Aggregator or the CMS provider, and would not require any development of new technology. One2many states that there are numerous ''channels,'' or Message Identifiers, available in a cell broadcast. According to One2many, end users can activate their phones to receive messages on the channel number that matches their language.

76. By contrast, most parties in this proceeding concur with the CMSAAC that further study of multiple language alerting is necessary. CTIA, for example, states that the Commission should not require electing CMS providers to transmit alerts in multiple languages because of limitations in providers' existing air interfaces, handset character sets, and traffic overflow. Regarding the varying air interfaces, Alltel concurs with the CMSAAC that transmitting multi-language alerts is not technically feasible for CDMA systems, subject to future review as technology improves. According to Alltel, GSM can support multiple channels for simultaneous broadcast and discrete channels could be dedicated to different languages. Alltel explains that CDMA lacks this capability and would require sequential broadcasts of alerts in multiple languages with the potential for unacceptable latency between broadcasts of the same language while alerts in multiple languages are sequentially broadcast.

77. With respect to character set limitations in mobile devices, MetroPCS states that most handsets currently marketed in the United States use the Latin alphabet and would not support other languages—and that adding such capabilities would create substantial burdens on electing CMS providers and manufacturers, while increasing the costs of handsets to consumers. The American Association of Paging Carriers similarly explains that parallel alerts in languages other than English would threaten network congestion, and complicate subscriber device designs and capabilities. T-Mobile adds that a multi-language requirement would impede CMAS deployment, and that until the technology improves to facilitate multiple languages, non-English speaking users could be prompted by an English alert to turn to sources in their respective languages for further information.

78. Several parties, including AT&T, recommend that the Commission initially require alerts only in English, but also develop a national plan that provides federal, state, and local alert initiators with clear guidance on how alert initiators must craft multi-language alerts that reach the electing CMS Provider Gateways in a standardized format ready for end-user delivery without translation. The CAPUC, which advocates mandatory multi-language alerting, urges the Commission to examine whether latency or delivery concerns could be resolved if language receipt were part of a pre-subscription process. The Wireless RERC asks that the Commission encourage providers serving non-English speaking users to install software that will automatically translate English emergency messages into other languages, especially given the potential delay caused by an alert originator having to send out messages in multiple languages. These parties' insightful comments as well as those discussed above underscore that electing CMS providers face many technical challenges as they seek to implement alerting in languages in addition to English. Accordingly, the Commission concludes that further study is needed to develop capabilities for providing alerts in multiple languages, and does not require provision of alerts in any language other than English at this time. The Commission encourages the wireless industry and the public safety community to expeditiously develop and implement capabilities to deliver alerts in languages in addition to English.

79. *Roaming*. The Commission agrees with the CMSAAC and the majority of commenting parties that the public interest will be served by requiring participating CMS providers to support CMAS alerting when subscribers are receiving services through roaming. As discussed further below, the Commission finds that adopting such a

requirement is consistent with its responsibility under the WARN Act to enable commercial mobile service alerting, as well as its duty under Executive Order 13407 to ''adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system.''

80. In the *Automatic Roaming Order*, the Commission found that ''consumers have come to expect seamless wireless service wherever they travel within the United States and, ultimately, this will be achieved through automatic roaming.'' Thus, as a general matter, mobile device users will anticipate that the alerting features and services available to them in their home market will be available when roaming. Under the rules the Commission adopts, when a subscriber receives services pursuant to a roaming agreement and the operator of the roamed upon network is a participating CMS provider, the subscriber will receive alert messages, provided the subscriber's mobile device is configured for and technically capable of receiving alert messages from the roamed upon network.

81. *Preemption of Calls in Progress*. The CMSAAC recommended that CMAS alerts not preempt ongoing voice or data sessions. The Commission agrees with this recommendation. It believes that it would be contrary to the public interest if alert messages were to preempt certain active voice or data sessions. During a crisis, such as a terrorist attack, many individuals will be seeking emergency aid related to the actual event and other emergencies. In either circumstance, the public would be ill served if their calls for urgent aid were summarily preempted. In light of this, the Commission will require that any device marketed as ''CMAS compliant'' must not permit an alert to preempt an ongoing call.

82. *Service Profiles*. In its recommendations, the CMSAAC introduced the concept of technology-neutral service profiles for emergency alerts, each containing, for example, information on maximum payload and displayable message size. The CMSAAC further recommended specific service profiles for: (a) Text; (b) Streaming Audio (future capability); (c) Streaming Video (future capability); and (c) Downloaded Multimedia Profile (future capability), and provided general recommendations and conclusions for each. In the CMAS NPRM, the Commission sought comment on the service profiles recommended by the CMSAAC. The Commission agrees with those commenters who argue that it should adopt the CMSAAC's recommendation that text-only alerts are appropriate for an initial system. Because the Commission believes that it would be premature and not consistent with its obligations under section 602(a) of the WARN Act to adopt standards and requirements for technologies that are still under development, this Order will not address future technologies such as streaming audio, video and downloadable multimedia. Rather, this Order will only address CMSAAC recommended profiles for text.

83. As part of the text profile, the CMSAAC recommended a maximum displayable message size of 90 characters. The Commission sought comment on this recommendation in the CMAS NPRM. Several commenters support the CMSAAC's recommendation. For example, AT&T states that, ''given the current technical limitations in delivering emergency alerts, during the nascent stages of the CMAS the Commission should limit alerts to 90 characters * * *'' Motorola supports this view and notes that inclusion of additional information and characters beyond 90 characters will strain the network, causing few people to receive the alert. AAPC states that the 90 character limit strikes an appropriate balance between complexity and a reasonably constructed CMAS. Other commenters raised concerns that a 90 character limit would not provide sufficient information to subscribers about emergencies. For example, CellCast states in their comments that 90 characters alone is insufficient to convey a complete alert to mobile devices. Furthermore, one commenter stated that the ''character count recommendations are reasonable for display of 'basic' warnings but CMSAAC recommendations should accommodate supplemental and verbose message formats.''

84. The Commission concludes that, at this initial stage, adoption of a 90 character limit serves the public interest. The Commission agrees with commenters such as MetroPCS that a 90 character limit will allow all systems to transmit the message with minimal change, and that 90 characters is an effective limit to allow the message to be delivered and actually be read. As the CMSAAC concluded and the Wireless Rehabilitation Engineering Research Center (WRERC) notes, the 90 character text limit of any CMAS alert is reasonable because the CMAS alert is intended to get the attention of a person. The person can then seek out other media for confirmation of the alert and more information.

85. The CMSAAC also recommended that where the alert coming into the Alert Gateway contains a link to an Internet Web site (or URL) as a resource element, the Alert Gateway would retrieve any file specified by the URL and deliver that file to the CMS Provider Gateway. This is a different issue from the URL in free text issue discussed above, because it implicates the manner in which the alert is sent to the CMS Provider Gateway, as opposed to the actual content of the alert itself. The Commission agrees with the CMSAAC that CMS provider networks do not have the resources to process alerts with internet links. Further, URLs may link the CMS Provider Gateway to untrusted Internet sites that could fall outside the security requirements that the electing CMS providers have indicated are an essential element of the CMAS. Accordingly, in the CMS provider profile, no alerts with internal URLs may be accepted. Rather, related files or other resource elements must be provided separately by the Alert Gateway to the CMS Provider Gateway.

86. The Commission also adopts the CMSAAC observation that the CMAS profiles will not be able to accommodate real-time content, including a Presidential alert, even in text format. The Commission believes that the CMSAAC has given sufficient indication of the limits of current CMS provider architecture to support this conclusion. Currently, the only real-time alert that could potentially be provided to the CMAS is the Presidential alert (Emergency Alert Notification or EAN). In the event that such a significant event were to occur, all broadcast media would be carrying the message, and as the Wireless RERC recommends, instructing the public to tune to their local radio and television station and other mass media is the best option for obtaining additional emergency information.

87. The text profiles the Commission adopts are reflected in table below:

TEXT PROFILE

Attribute Name	Attribute Definition	Note
Service Profile: Text_Universal_Service_Profile		
Purpose	Common denominator for text messages	
Maximum Payload Size	120 bytes	Size is estimated.
Maximum Displayable Message Size	90 characters for an English language CMA encoded with 7-bit encoding.	Languages other than English, or coding other then 7-bit coding, will result in a change to the maximum number of characters supported.
Data Coding Scheme	UTF–8 as defined in IETF RFC–3629	The text provided over the C interface is provided in UTF–8 format which is capable of supporting text in English and other languages. It is the responsibility of the CMS Provider Gateway to translate to any character format encoding required by the CMS provider selected delivery technology.

88. *Security for CMAS Alerts*. The CMSAAC recommended a specific Alert Aggregator and Alert Gateway Trust Model to assure the security, authentication and authorization of alerts from the Alert initiator to the CMS Provider Gateway. The CMSAAC also recommended security requirements for communications across the ''C'' interface between the Alert Gateway and CMS Provider Gateways and within each CMS provider's network. For example, the CMSAAC recommended that communications across the ''C'' interface be IP based. According to the CMSAAC, the security of the Reference Point C interface should be based upon standard IP security mechanisms such as VPN tunnels and IPSEC functionalities.

89. The Commission finds that an IP-based communications across the ''C'' interface serves the public interest because it would enhance the security of the CMAS. Accordingly, the Commission adopts the CMSAAC's recommendation. It disagrees with Purple Tree Technologies' concerns that the protocols put forth are insufficient to provide the security required, and that a higher layer security protocol is necessary over the ''C'' interface between the Alert and CMS Provider Gateways. Rather, the Commission agrees with Verizon Wireless, which in its Reply Comments rejects such a need. As Verizon Wireless correctly points out, under the CMAS Reference Architecture, which the Commission has adopted in this Order, the need for higher layer security protocols exists only as an element of the ''Trust Model,'' which addresses the linkage between the Alert Gateway and alert initiators. By the time the Alert Gateway hands off a particular alert to the CMS Provider Gateway, any necessary authentication and authorization has been completed, thus obviating the need for a higher level security layer over the ''C'' interface.

90. The CMSAAC recommended that the security at Reference Points D and E be based upon CMS provider policies and upon the capabilities of the CMS provider selected delivery technologies. No commenter opposes this recommendation, and the Commission believes that the recommendation is consistent with the technologically neutral policy of this Order and is consistent with section 602(a) of the WARN Act which requires that the Commission adopt technical requirements necessary to facilitate emergency alert capabilities of CMS providers. Accordingly, the Commission adopts this recommendation of the CMSAAC.

91. *CMAS Reliability and Performance*. The CMSAAC made general recommendations concerning CMAS system performance requirements. Most requirements are prospective observations and recommendations. Major ones include:

- *Alert Gateway capacity*. Based on historical data, the CMSAAC made certain predictions concerning Alert Gateway performance requirements, including the capability to monitor system utilization for capacity planning purposes, and to temporarily disable and buffer CMAS alert traffic in the event of an overload.
- *Assessing latency in alert delivery*. The CMSAAC stated that such an assessment would be difficult to make prior to deployment, but notes certain relevant factors, including: Mobile device battery life impact, call processing impact; capabilities of the delivery technology; message queues; number of languages; number of targeted cell sites/paging transceivers for the alert area; and any geo-targeting processing.
- *End-to-end reliability*. The CMSAAC recommends that the CMAS end-to-end reliability technology meet telecom standards for highly reliable systems, but notes that the over-all reliability of CMAS is unpredictable because RF transmissions can be subject to noise and other interference or environmental factors; the capabilities of the cellular environment are not predictable especially in a disaster environment; the subscriber may be in a location that does not have any RF signal; and the subscriber's mobile device may not have any remaining power.

92. In order to assure the reliability and performance of this new system, the CMSAAC recommended procedures for logging CMAS alerts at the Alert Gateway and for testing the system at the Alert Gateway and on an end-to-end basis. Because this presumes the existence of an entity acting in the role of Alert Aggregator/Gateway, the Commission cannot adopt rules in this area at this time.

93. *Timeline for Implementation of Technical Requirements, Standards and Protocols*. In its recommendations, the CMSAAC proposed a specific timeline for the implementation of the CMAS. According to the CMSAAC, it would take a minimum of 24 months from the date by which CMS providers must elect to participate in the CMAS under section 602(b)(2)(A) of the WARN Act to deploy the CMAS. The CMSAAC proposed deployment timeline was based upon the assumptions that (1) the CMSAAC recommendations contained within this document are accepted without any major technical changes and (2) the government documentation and deliverables are available at the milestone dates indicated on the timeline. In this regard, the CMSAAC also assumed that the requirements, development, and deployments of the Alert Gateway and Alert Aggregator would align with the CMS provider developments to allow for testing during the development process and prior to CMAS deployments. The CMSAAC

recommended timeline assumed that Federal Government interface specifications would be available in January, 2008, 10 months before CMAS development and testing was to begin.

94. At the outset the Commission notes that the majority of commenters that addressed the issue supported the CMSAAC's proposed deployment timeline. Further, in its comments, FEMA asked the Commission not to adopt an effective date for these rules until all legal issues regarding the Federal government's role in the CMAS have been identified and resolved. In making this request, FEMA provided no indication as to when it believes such issues may be resolved.

95. Issues related to the CMSAAC proposed timeline fall under the election provisions of section 602(b) of the WARN Act, and so are not strictly within the purview of this initial technical Order that complies with section 602(a). However, the Commission agrees with the CMSAAC that the Alert Aggregator and Alert Gateway must be in place in order for CMS providers to complete development of the CMAS and to begin receiving and transmitting emergency alerts.

96. The Federal Alert Aggregator and Alert Gateway will make the Government Interface Design specifications available. In accordance with the CMSAAC proposed timeline, CMS providers must begin development and testing of the CMAS in a manner consistent with the rules adopted in the CMAS First Report and Order no later than 10 months from the date that the Alert Aggregator/Alert Gateway makes the Government Interface Design specifications available. This time period is consistent with the 10 months the CMSAAC proposed timeline indicates would elapse between the availability of the Aggregator/Gateway interface design specification and the beginning of CMAS development and testing. The Commission believes that this will give the government and industry stakeholders sufficient time to begin development, including the federal government's role. It will also give electing CMS providers adequate time to come into compliance with the rules adopted herein.

Procedural Matters

A. Final Paperwork Reduction Act Analysis

97. This Report and Order may contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. If the Commission determines that the Report and Order contains collection subject to the PRA, it will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA at an appropriate time. At that time, OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

B. Report to Congress

98. The Commission will send a copy of the CMAS First Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

99. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in PSHSB Docket 07–287 (CMAS NPRM). The Commission sought written public comments on the proposals in the CMAS NPRM, including comment on the IRFA. Comments on the IRFA were to have been explicitly identified as being in response to the IRFA and were required to be filed by the same deadlines as that established in section IV of the CMAS NPRM for other comments to the CMAS NPRM. The Commission sent a copy of the CMAS NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the CMAS NPRM and IRFA were published in the **Federal Register**.

Need for, and Objectives of, the Order

100. Section 602(a) of the WARN Act requires the Commission to ''complete a proceeding to adopt relevant technical standards, protocols, procedures, and other technical requirements based on the recommendations of [the Commercial Mobile Service Alert Advisory Committee (CMSAAC)] necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts.'' Although the CMAS NPRM solicited comment on issues related to section 602(b) (CMS provider election to the CMAS) or 602(c) (Public Television Station equipment requirements), the CMAS First Report and Order only addresses issues raised by section 602(a) of the WARN Act. Accordingly, this FRFA only addressees the manner in which any commenters to the IRFA addressed the Commission's adoption of technical standards, requirements and protocols for the CMAS as required by section 602(a) of the WARN Act.

101. The CMAS First Report and Order adopts rules necessary to enable CMS alerting capability for CMS providers who elect to transmit emergency alerts to their subscribers. The Order adopts technologically neutral rules governing the CMS provider-related functions and responsibilities with respect to the CMAS. Specifically, the rules address the CMS providers' functions within the CMAS, including CMS provider-controlled elements within the CMAS architecture, emergency alert formatting, classes and elements, geographic targeting (geo-targeting) and accessibility for people with disabilities and the elderly.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

102. There were no comments filed that specifically addressed the IRFA. The only commenter that explicitly identified itself as a small business was Interstate Wireless, Inc., which supported the Commission's adoption of the CMSAAC's recommendations. Although Interstate Wireless did not comment specifically on the IRFA, it did state that the cost of building and maintaining a CMS Provider Gateway would be more than it and other similarly situated Small Business CMS providers could afford and still be able to provide the alert service to the public without cost. Accordingly, Interstate Wireless requested that the Federal Government either provide the proper software and reception equipment for the CMS Provider Gateways, or provide grants to the Small Business CMS providers to purchase, install, and maintain the equipment themselves. In paragraph 19, note 58 of the CMAS First Report and Order the Commission notes that questions of funding are not addressed by section 602(a) of the WARN Act and are outside of the scope of this Order.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

103. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

104. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission estimates small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small.

105. *Cellular Service.* As noted, the SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Accordingly, the pertinent data for this category is contained within the prior Wireless Telecommunications Carriers (except Satellite) category.

106. *Auctions.* Initially, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

107. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

108. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

109. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

110. *700 MHz Guard Bands Licenses.* In the 700 MHz Guard Bands Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not

exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses. Subsequently, in the 700 MHz Second Report and Order, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel). A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks. Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

111. *700 MHz Band Commercial Licenses*. There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) ''small business,'' which is defined as an entity that has attributed average annual gross revenues that do not exceed $15 million during the preceding three years; and (2) ''very small business,'' which is defined as an entity with attributed average annual gross revenues that do not exceed $40 million for the preceding three years. In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards.

112. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: Five EAG licenses and 251 CMA licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

113. The remaining 62 megahertz of commercial spectrum is currently scheduled for auction on January 24, 2008. As explained above, bidding credits for all of these licenses will be available to ''small businesses'' and ''very small businesses.''

114. *Advanced Wireless Services*. In the AWS–1 Report and Order, the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission did not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the AWS–1 Report and Order adopts the same small business size definition that the Commission adopted for the broadband PCS service and that the SBA approved. In particular, the AWS–1 Report and Order defines a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The AWS–1 Report and Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

115. *Common Carrier Paging*. As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census category of ''Wireless Telecommunications Carriers (except Satellite).'' Under this category, the SBA deems a business to be small if it has 1,500 or fewer employees. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. Thus, under this category, the majority of firms can be considered small.

116. In the Paging Third Report and Order, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and

closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services. Of those, the Commission estimates that 360 are small, under the SBA-approved small business size standard.

117. *Wireless Communications Service*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

118. *Wireless Communications Equipment Manufacturers*. While these entities are merely indirectly affected by its action, the Commission describes them to achieve a fuller record. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

119. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

120. *Software Publishers*. While these entities are merely indirectly affected by its action, the Commission is describing them to achieve a fuller record. These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $23 million or less in average annual receipts for the category of Software Publishers. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of the firms in this category are small entities that may be affected by its action.

121. *NCE and Public Broadcast Stations*. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having $13 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 (twelve) million or less. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

122. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent. There are also 2,117 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

123. The Commission has, under SBA regulations, estimated the number of licensed NCE television stations to be 380. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to

determine how many such stations would qualify as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

124. This Report and Order may contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. If the Commission determines that the Report and Order contains collection subject to the PRA, it will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA at an appropriate time. At that time, OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

125. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

126. As noted above, the CMAS First Report and Order deals only with the WARN Act section 602(a) requirement that the Commission adopt technical standards, protocols, procedures, and other technical requirements based on the recommendations of the Commercial Mobile Service Alert Advisory Committee. The entities affected by this Order were largely the members of the CMSAAC. In its formation of the CMSAAC, the Commission made sure to include representatives of small businesses among the advisory committee members. Also, as the Commission indicates by its treatment of the comments of Interstate Wireless above, the technical requirements, standards and protocols on which the Commission sought comment already contain concerns raised by small businesses. The WARN ACT NPRM also sought comment on a number of alternatives to the recommendations of the CMSAAC, such as the Digital EAS and FM sub-carrier based alerts. In its consideration of these and other alternatives the CMSAAC recommendations, the Commission has attempted to impose minimal regulation on small entities to the extent consistent with the Commission's goal of advancing its public safety mission by adopting technical requirements, standards and protocols for a CMAS that CMS providers would elect to provide alerts and warnings to their customers. The affected CMS providers have overwhelmingly expressed their willingness to cooperate in the formation of the CMAS, and the Commission anticipates that the standards, protocols and requirement that it adopts in this Order will encourage CMS providers to work with other industry and government entities to complete and participate in the CMAS.

Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

127. None.

Report to Congress

128. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.

Ordering Clauses

129. *It is ordered,* that pursuant to sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act, this Report and Order is hereby adopted. The rules adopted in this Report and Order shall become effective September 22, 2008, except that any new information collection requirements contained in these rules will not become effective prior to OMB approval. The Commission will publish a document in the **Federal Register** announcing the effective date of any information collections.

130. *It is further ordered* that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Council for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 10

Alert and warning, AMBER alert, Commercial mobile service provider.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter I by adding Part 10 to read as follows:

PART 10—COMMERCIAL MOBILE ALERT SYSTEM

Subpart A—General Information

Sec.
10.1 Basis.
10.2 Purpose.
10.10 Definitions.
10.11 CMAS Implementation Timeline.

Subpart B—Election To Participate in Commercial Mobile Alert System [Reserved]

Subpart C—System Architecture

10.300 Alert Aggregator [Reserved]
10.310 Federal Alert Gateway [Reserved]
10.320 Provider Gateway Requirements.
10.330 Provider Infrastructure Requirements.

Subpart D—Alert Message Requirements

10.400 Classification.
10.410 Prioritization.
10.420 Message Elements.
10.430 Character Limit.
10.440 Embedded Reference Prohibition.
10.450 Geographic Targeting.
10.460 Retransmission Frequency [Reserved]
10.470 Roaming.

Subpart E—Equipment Requirements

10.500 General Requirements.
10.510 Call Preemption Prohibition.
10.520 Common Audio Attention Signal.
10.530 Common Vibration Cadence.
10.540 Attestation Requirement [Reserved]

Authority: 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606; sections 602(a), (b), (c), (f), 603, 604 and 606 of Pub. L. 109–347, 120 Stat. 1884.

Subpart A—General Information

§ 10.1 Basis.

The rules in this part are issued pursuant to the authority contained in the Warning, Alert, and Response Network Act, Title VI of the Security

and Accountability for Every Port Act of 2006, Public Law 109–347, Titles I through III of the Communications Act of 1934, as amended, and Executive Order 13407 of June 26, 2006, Public Alert and Warning System, 71 FR 36975, June 26, 2006.

§ 10.2 Purpose.

The rules in this part establish the requirements for participation in the voluntary Commercial Mobile Alert System.

§ 10.10 Definitions.

(a) *Alert Message.* An Alert Message is a message that is intended to provide the recipient information regarding an emergency, and that meets the requirements for transmission by a Participating Commercial Mobile Service Provider under this part.

(b) *Common Alerting Protocol.* The Common Alerting Protocol (CAP) refers to Organization for the Advancement of Structured Information Standards (OASIS) Standard CAP–V1.1, October 2005 (available at *http://www.oasis-open.org/specs/index.php#capv1.1*), or any subsequent version of CAP adopted by OASIS and implemented by the CMAS.

(c) *Commercial Mobile Alert System.* The Commercial Mobile Alert System (CMAS) refers to the voluntary emergency alerting system established by this part, whereby Commercial Mobile Service Providers may elect to transmit Alert Messages to the public.

(d) *Commercial Mobile Service Provider.* A Commercial Mobile Service Provider (or CMS Provider) is an FCC licensee providing commercial mobile service as defined in section 332(d)(1) of the Communications Act of 1934 (47 U.S.C. 332(d)(1)). Section 332(d)(1) defines the term commercial mobile service as any mobile service (as defined in 47 U.S.C. 153) that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.

(e) *County and County Equivalent.* The terms County and County Equivalent as used in this part are defined by Federal Information Processing Standards (FIPS) 6–4, which provides the names and codes that represent the counties and other entities treated as equivalent legal and/or statistical subdivisions of the 50 States, the District of Columbia, and the possessions and freely associated areas of the United States. Counties are considered to be the ''first-order subdivisions'' of each State and statistically equivalent entity, regardless of their local designations (county, parish, borough, *etc.*). Thus, the following entities are considered to be equivalent to counties for legal and/or statistical purposes: The parishes of Louisiana; the boroughs and census areas of Alaska; the District of Columbia; the independent cities of Maryland, Missouri, Nevada, and Virginia; that part of Yellowstone National Park in Montana; and various entities in the possessions and associated areas. The FIPS codes and FIPS code documentation are available online at *http://www.itl.nist.gov/fipspubs/index.htm*.

(f) *Participating Commercial Mobile Service Provider.* A Participating Commercial Mobile Service Provider (or a Participating CMS Provider) is a Commercial Mobile Service Provider that has voluntarily elected to transmit Alert Messages under subpart B of this part.

§ 10.11 CMAS Implementation Timeline.

Notwithstanding anything in this part to the contrary, a Participating CMS provider shall begin development and testing of the CMAS in a manner consistent with the rules in this part no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.

Subpart B—Election to Participate in Commercial Mobile Alert System [Reserved]

Subpart C—System Architecture

§ 10.300 Alert Aggregator [Reserved]

§ 10.310 Federal Alert Gateway [Reserved]

§ 10.320 Provider Alert Gateway Requirements.

This section specifies the functions that each Participating Commercial Mobile Service provider is required to support and perform at its CMS provider gateways.

(a) *General.* The CMS provider gateway must provide secure, redundant, and reliable connections to receive Alert Messages from the Federal alert gateway. Each CMS provider gateway must be identified by a unique IP address or domain name.

(b) *Authentication and Validation.* The CMS provider gateway must authenticate interactions with the Federal alert gateway, and validate Alert Message integrity and parameters. The CMS provider gateway must provide an error message immediately to the Federal alert gateway if a validation fails.

(c) *Security.* The CMS provider gateway must support standardized IP-based security mechanisms such as a firewall, and support the defined CMAS ''C'' interface and associated protocols between the Federal alert gateway and the CMS provider gateway.

(d) *Geographic Targeting.* The CMS provider gateway must determine whether the provider has elected to transmit an Alert Message within a specified alert area and, if so, map the Alert Message to an associated set of transmission sites.

(e) *Message Management.*

(1) Formatting. The CMS provider gateway is not required to perform any formatting, reformatting, or translation of an Alert Message, except for transcoding a text, audio, video, or multimedia file into the format supported by mobile devices.

(2) Reception. The CMS provider gateway must support a mechanism to stop and start Alert Message deliveries from the Federal alert gateway to the CMS provider gateway.

(3) Prioritization. The CMS provider gateway must process an Alert Message on a first in-first out basis except for Presidential Alerts, which must be processed before all non-Presidential alerts.

(4) Distribution. A Participating CMS provider must deploy one or more CMS provider gateways to support distribution of Alert Messages and to manage Alert Message traffic.

(5) Retransmission. The CMS provider gateway must manage and execute Alert Message retransmission, and support a mechanism to manage congestion within the CMS provider's infrastructure.

(f) *CMS Provider Profile.* The CMS provider gateway will provide profile information on the CMS provider for the Federal alert gateway to maintain at the Federal alert gateway. This profile information must be provided by an authorized CMS provider representative to the Federal alert gateway administrator. The profile information must include the data listed in Table 10.320(f) and must comply with the following procedures:

(1) The information must be provided 30 days in advance of the date when the CMS provider begins to transmit CMAS alerts.

(2) Updates of any CMS provider profiles must be provided in writing at least 30 days in advance of the effective change date.

TABLE 10.320(f).—CMSP PROFILE ON FEDERAL ALERT GATEWAY

Profile parameter	Parameter election	Description
CMSP Name		Unique identification of CMSP.
CMSP gateway Address	IP address or Domain Name	
	Alternate IP address	Optional and subject to implementation.
Geo-Location Filtering	<yes/no>	If "yes" the only CMAM issued in the listed states will be sent to the CMSP gateway. If "no", all CMAM will be sent to the CMSP gateway.
If yes, list of states	CMAC Geocode for state	List can be state name or abbreviated state name.

§ 10.330 Provider Infrastructure Requirements.

This section specifies the general functions that a Participating CMS Provider is required to perform within their infrastructure. Infrastructure functions are dependent upon the capabilities of the delivery technologies implemented by a Participating CMS Provider.

(a) Distribution of Alert Messages to mobile devices.

(b) Authentication of interactions with mobile devices.

(c) Reference Points D & E. Reference Point D is the interface between a CMS Provider gateway and its infrastructure. Reference Point E is the interface between a provider's infrastructure and mobile devices including air interfaces. Reference Points D and E protocols are defined and controlled by each Participating CMS Provider.

Subpart D—Alert Message Requirements

§ 10.400 Classification.

A Participating CMS Provider is required to receive and transmit three classes of Alert Messages: Presidential Alert; Imminent Threat Alert; and Child Abduction Emergency/AMBER Alert.

(a) *Presidential Alert.* A Presidential Alert is an alert issued by the President of the United States or the President's authorized designee.

(b) *Imminent Threat Alert.* An Imminent Threat Alert is an alert that meets a minimum value for each of three CAP elements: Urgency, Severity, and Certainty.

(1) Urgency. The CAP Urgency element must be either Immediate (*i.e.*, responsive action should be taken immediately) or Expected (*i.e.*, responsive action should be taken soon, within the next hour).

(2) Severity. The CAP Severity element must be either Extreme (*i.e.*, an extraordinary threat to life or property) or Severe (*i.e.*, a significant threat to life or property).

(3) Certainty. The CAP Certainty element must be either Observed (*i.e.*, determined to have occurred or to be ongoing) or Likely (*i.e.*, has a probability of greater than 50 percent).

(c) *Child Abduction Emergency/AMBER Alert.* (1) An AMBER Alert is an alert initiated by a local government official based on the U.S. Department of Justice's five criteria that should be met before an alert is activated:

(i) Law enforcement confirms a child has been abducted;

(ii) The child is 17 years or younger;

(iii) Law enforcement believes the child is in imminent danger of serious bodily harm or death;

(iv) There is enough descriptive information about the victim and the abduction to believe an immediate broadcast alert will help; and

(v) The child's name and other data have been entered into the National Crime Information Center.

(2) There are four types of AMBER Alerts: Family Abduction; Non-family Abduction; Lost, Injured or Otherwise Missing; and Endangered Runaway.

(i) Family Abduction. A Family Abduction (FA) alert involves an abductor who is a family member of the abducted child such as a parent, aunt, grandfather, or stepfather.

(ii) Nonfamily Abduction. A Nonfamily Abduction (NFA) alert involves an abductor unrelated to the abducted child, either someone unknown to the child and/or the child's family or an acquaintance/friend of the child and/or the child's family.

(iii) Lost, Injured, or Otherwise Missing. A Lost, Injured, or Otherwise Missing (LIM) alert involves a case where the circumstances of the child's disappearance are unknown.

(iv) Endangered Runaway. An Endangered Runaway (ERU) alert involves a missing child who is believed to have run away and in imminent danger.

§ 10.410 Prioritization.

A Participating CMS Provider is required to transmit Presidential Alerts upon receipt. Presidential Alerts preempt all other Alert Messages. A Participating CMS Provider is required to transmit Imminent Threat Alerts and AMBER Alerts on a first in-first out (FIFO) basis.

§ 10.420 Message Elements.

A CMAS Alert Message processed by a Participating CMS Provider shall include five mandatory CAP elements—Event Type; Area Affected; Recommended Action; Expiration Time (with time zone); and Sending Agency. This requirement does not apply to Presidential Alerts.

§ 10.430 Character Limit.

A CMAS Alert Message processed by a Participating CMS Provider must not exceed 90 characters of alphanumeric text.

§ 10.440 Embedded Reference Prohibition.

A CMAS Alert Message processed by a Participating CMS Provider must not include an embedded Uniform Resource Locator (URL), which is a reference (an address) to a resource on the Internet, or an embedded telephone number. This prohibition does not apply to Presidential Alerts.

§ 10.450 Geographic Targeting.

This section establishes minimum requirements for the geographic targeting of Alert Messages. A Participating CMS Provider will determine which of its network facilities, elements, and locations will be used to geographically target Alert Messages. A Participating CMS Provider must transmit any Alert Message that is specified by a geocode, circle, or polygon to an area not larger than the provider's approximation of coverage for the Counties or County Equivalents with which that geocode, circle, or polygon intersects. If, however, the propagation area of a provider's transmission site exceeds a single County or County Equivalent, a Participating CMS Provider may transmit an Alert Message to an area not exceeding the propagation area.

§ 10.460 Retransmission Frequency [Reserved]

§ 10.470 Roaming.

When, pursuant to a roaming agreement (*see* § 20.12 of this chapter), a subscriber receives services from a roamed-upon network of a Participating

CMS Provider, the Participating CMS Provider must support CMAS alerts to the roaming subscriber to the extent the subscriber's mobile device is configured for and technically capable of receiving CMAS alerts.

Subpart E—Equipment Requirements

§ 10.500 General Requirements.

CMAS mobile device functionality is dependent on the capabilities of a Participating CMS Provider's delivery technologies. Mobile devices are required to perform the following functions:

(a) Authentication of interactions with CMS Provider infrastructure.

(b) Monitoring for Alert Messages.

(c) Maintaining subscriber alert opt-out selections, if any.

(d) Maintaining subscriber alert language preferences, if any.

(e) Extraction of alert content in English or the subscriber's preferred language, if applicable.

(f) Presentation of alert content to the device, consistent with subscriber opt-out selections. Presidential Alerts must always be presented.

(g) Detection and suppression of presentation of duplicate alerts.

§ 10.510 Call Preemption Prohibition.

Devices marketed for public use under part 10 must not enable an Alert Message to preempt an active voice or data session.

§ 10.520 Common Audio Attention Signal.

A Participating CMS Provider and equipment manufacturers may only market devices for public use under part 10 that include an audio attention signal that meets the requirements of this section.

(a) The audio attention signal must have a temporal pattern of one long tone of two (2) seconds, followed by two short tones of one (1) second each, with a half (0.5) second interval between each tone. The entire sequence must be repeated twice with a half (0.5) second interval between each repetition.

(b) For devices that have polyphonic capabilities, the audio attention signal must consist of the fundamental frequencies of 853 Hz and 960 Hz transmitted simultaneously.

(c) For devices with only a monophonic capability, the audio attention signal must be 960 Hz.

(d) The audio attention signal must be restricted to use for Alert Messages under part 10.

(e) A device may include the capability to mute the audio attention signal.

§ 10.530 Common Vibration Cadence.

A Participating CMS Provider and equipment manufacturers may only market devices for public use under part 10 that include a vibration cadence capability that meets the requirements of this section.

(a) The vibration cadence must have a temporal pattern of one long vibration of two (2) seconds, followed by two short vibrations of one (1) second each, with a half (0.5) second interval between each vibration. The entire sequence must be repeated twice with a half (0.5) second interval between each repetition.

(b) The vibration cadence must be restricted to use for Alert Messages under part 10.

(c) A device may include the capability to mute the vibration cadence.

§ 10.540 Attestation Requirement [Reserved]

[FR Doc. E8–16853 Filed 7–23–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[FWS–R9–WSR–2008–0035; 91400–5110–0000–7B]

RIN 1018–AV99

Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are revising certain provisions of the regulations governing the Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety financial assistance programs. These revisions: (a) Address changes in law and regulation; (b) clarify rules on license certification to address a greater number of licensing choices that States have offered hunters and anglers; (c) delete provisions on audits and records that are addressed in other regulations broadly applicable to financial assistance programs managed by the Department of the Interior; and (d) reword the regulations to make them easier to understand. The revisions will improve the regulations by making them more current and clear.

DATES: This rule is effective August 25, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703–358–2156.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of the Interior's Fish and Wildlife Service (Service) manages 40 financial assistance programs, 14 of which are managed, in whole or in part, by the Service's Wildlife and Sport Fish Restoration Program. This final rule will revise title 50, part 80, of the Code of Federal Regulations (CFR), which contains the regulations that govern three programs: Wildlife Restoration, Sport Fish Restoration, and Hunter Education and Safety. These programs provide financial assistance to the fish and wildlife agencies of States and other eligible jurisdictions to manage fish and wildlife and provide hunter education and safety programs. The Catalog of Federal Domestic Assistance at *http://www.cfda.gov* describes these programs under 15.611, 15.605, and 15.626.

The Federal Aid in Wildlife Restoration Act of September 2, 1937, and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, as amended, established the programs affected by this rule. These Acts are more commonly known as the Pittman-Robertson Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669–669k) and the Dingell-Johnson Sport Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777–777n). They established a user-pay and user-benefit system in which the fish and wildlife agencies of the States, Commonwealths, and territories receive formula-based funding from a continuing appropriation. The District of Columbia also receives such funding, but only for managing fish resources. Industry partners pay taxes on equipment and gear purchased by hunters, anglers, boaters, archers, and recreational shooters. Taxes on fuel for motor boats and small engines are also a source of revenue. The Service then distributes these funds to the fish and wildlife agencies of States and other eligible jurisdictions. States must match these Federal funds by providing at least a 25-percent cost share. In fiscal year 2008, the States and other eligible jurisdictions received $310 million through the Wildlife Restoration and Hunter Education and Safety programs and $398 million through the Sport Fish Restoration program.

The Service revised two sections of 50 CFR 80 in 2001, but we have not reviewed other sections for revision

since the 1980's. Consequently, some provisions do not reflect:

(a) 43 CFR 12, subpart C ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'';

(b) The Transportation Equity Act for the 21st Century (1998) (Pub. L. [P.L.] 105–178);

(c) The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Pub. L. 106–408);

(d) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (2005) (Pub. L. 109–59); and

(e) The Presidential memorandum of June 1, 1998, that required the use of plain language in Government writing.

In addition, we must clarify 50 CFR 80.10 on certification of hunting and fishing licenses to address the greater number of licensing choices that some States and other jurisdictions have offered hunters and anglers in recent years.

On May 5, 2008, we published a proposed rule (73 FR 24524) to revise the regulations governing 50 CFR 80. We accepted public comments that we received or were postmarked during a 30-day period that ended on June 4, 2008. This final rule adopts the changes we proposed on May 5, 2008, with additional changes described below.

Updates of the Regulations

We are making nonsubstantive administrative changes in 50 CFR 80 to ensure that its provisions reflect changes in law and regulation over the past 20 years. An important change was the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, which amended the legal authorities that established the affected programs. We are updating the U.S. Code citations in 50 CFR 80.1 for the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act to reflect this amendment. The 2000 amendment also allows us to refer to the Federal Aid in Wildlife Restoration Act of September 2, 1937, and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, by their more common names, ''Pittman-Robertson Wildlife Restoration Act'' and ''Dingell-Johnson Sport Fish Restoration Act.'' We are changing the collective name of all activities associated with the affected financial assistance programs from ''Federal Aid'' to ''Wildlife and Sport Fish Restoration Programs,'' which is consistent with the 2000 amendment.

We are deleting the definition and references to the Federal Aid Manual in § 80.1 and § 80.11 because it is no longer an official publication, and its successor document, the Service Manual, addresses Service employees and not the general public.

We are also replacing the reference in § 80.14 to Office of Management and Budget (OMB) Circular A–102's Attachment N with 43 CFR 12.71 and 12.932 as sources of guidance on the use and disposition of unneeded real property. We are changing ''aquatic education'' to ''aquatic resource education'' in § 80.15 to reflect more accurately the language of the Dingell-Johnson Sport Fish Restoration Act.

The provisions of § 80.19 on records and § 80.22 on audits refer to subject matter that was in the 1971 version of A–102. We are deleting all the contents of these sections because 43 CFR 12.82 and 12.66 are applicable to the affected programs and they address these subjects adequately.

We are deleting the estimates of time to fill out forms in § 80.27. This information will change over time and is not appropriate for regulations.

We have applied plain language principles to those provisions where we have to change or clarify the content of the regulations. This conversion to plain language makes the affected provisions clearer as well as complies with the Service's plain language policy. More specifically, we are replacing words that are susceptible to different meanings with words that are more precise, e.g., we are changing ''shall'' to ''must.''

We refer to the territories, Commonwealths, and the District of Columbia in a consistent way throughout 50 CFR 80. Finally, we are alphabetizing the definitions in § 80.1 for ease of reference.

Clarifying the Requirements

We are adding the territory of American Samoa to the jurisdictions in § 80.2(b) that are eligible to participate in the benefits of the Pittman-Robertson Wildlife Restoration Act. This is consistent with section 4(c) and 8A of the Act.

We are making administrative changes in § 80.10 to ensure that the process for certifying the number of hunter and angler licenses provides accurate data that are comparable among the States (''States'' includes Commonwealths, territories, and the District of Columbia in the context of license certification.). This change is important because we apportion funds to the States based in part on the numbers of these licenses. We are clarifying this process because, as States offered more licensing options, they began to use different approaches in counting the individuals who purchased licenses. We are making several changes to resolve these differences. We are clarifying the timeframe during which a State's license year must occur for the State to use it as the State-specified license certification period. We are establishing a common approach for States to assign single-year license holders to a license year. Under this approach, States will assign single-year license holders only to the period in which they purchased the license instead of having the option of assigning them to the period in which their licenses are legal. Finally, we are clarifying that, under certain conditions, States may assign a person who purchases a multiyear license to each license period in which the license is legal.

We are revising § 80.12 to add the District of Columbia to the three territories and two Commonwealths subject to the cost-sharing requirements of that section. This revision will make § 80.12 consistent with section 12 of the Dingell-Johnson Sport Fish Restoration Act, which authorizes the Secretary of the Interior to cooperate with the six jurisdictions on fish restoration and management projects under terms and conditions that the Secretary finds fair, just, and equitable. The Act also states that the Secretary may not require these jurisdictions to pay an amount that exceeds 25 percent of any project. The current version of § 80.12 authorizes Regional Directors to waive non-Federal cost sharing at their discretion for the jurisdictions listed in the section. The final rule continues to provide Regional Directors with discretionary waiver authority.

We are revising § 80.24 to make it consistent with the following provisions of the Dingell-Johnson Sport Fish Restoration Act: (a) A State must allocate 15 percent of each annual apportionment for recreational boating access facilities; (b) a State may allocate more or less than 15 percent in a fiscal year provided that the total regional allocation averages 15 percent over a 5-year period; (c) any portion of a State's 15-percent set aside for recreational boating access that remains unexpended or unobligated after 5 years must revert to the Service for apportionment among the States. To ensure that the total regional allocation averages 15 percent, we are requiring that a State obtain the approval of the Service's Regional Director to allocate more or less than 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act. We changed § 80.8 to indicate that the 5-year obligation period for recreational boating access funds is an exception to the general rule

of 2 years for the obligation or expenditure of funds.

Response to Public Comments

We published the proposed rule in the May 5, 2008, **Federal Register** (73 FR 24524) and invited public comments. We reviewed and considered all comments that were delivered to the Service's Division of Policy and Directives Management from May 5 to June 4, 2008, and all comments that were entered on *http://www.regulations.gov* or postmarked during that period. We received 29 comments from 27 State agencies, 2 comments from nonprofit organizations, and 3 comments from individuals. Most commenters addressed several issues, many of which were also addressed by other commenters. We classified these issues and the general expressions of support or nonsupport into 29 comments that follow the order of the subject matter of 50 CFR 80.

General

Comment 1: Three commenters expressed unqualified support for the proposed rule or major elements of it. They did not suggest any additions, deletions, or modifications.

Response 1: We did not change the proposed rule as a result of these comments.

Comment 2: Two commenters recommended that we withdraw the proposed rule to allow further consultations with State fish and wildlife agencies. Both listed specific provisions that they opposed.

Response 2: We did not accept the recommendation that we withdraw the proposed rule. We are responding to an urgent need to clarify how States can count individuals who purchased licenses under options that have become available in recent years. We are also updating 50 CFR 80 to reflect changes in law, regulatory format, and style. We addressed the commenters' specific issues in our responses below, and we accepted some of their recommendations on changing the proposed rule.

Comment 3: A commenter recommended that most funding for these programs should go to the State agencies that achieve the highest quality of hunter education and safety training.

Response 3: The Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act provide formulas for apportioning funds among the States. The commenter's recommendation is not an option under these formulas. We did not change the proposed rule as a result of this comment.

Section 80.1 Definitions

Comment 4: A commenter recommended that we delete the definition of ''resident hunter'' from proposed § 80.1 because the term does not occur in 50 CFR 80.

Response 4: We changed the proposed rule to delete ''resident hunter'' from § 80.1.

Section 80.2 Eligibility

Comment 5: Several commenters recommended that we add programs on outreach and communications and aquatic resource education to § 80.5 on eligible undertakings.

Response 5: The Dingell-Johnson Sport Fish Restoration Act clearly authorizes these programs, and § 80.5 is not in conflict with the law as stated. Therefore, we will defer consideration of this issue to a future rulemaking process so that we can invite the public to review the proposed language and provide comments.

Section 80.10 State Certification of Licenses

Comment 6: Several commenters recommended that we replace the word ''accounting period'' in § 80.10(a)(1) with ''license certification period'' or ''enumeration period.'' One commenter recommended that we strike ''12-month'' between ''State-specified'' and ''period'' in several places in § 80.10(b).

Response 6: We replaced ''accounting period'' with ''license certification period'' in § 80.10(a)(1). We also replaced ''State-specified period'' in § 80.10(a)(2) (redesignated as § 80.10(a)(3) by Response 9) and ''State-specified 12-month period'' in § 80.10(b) with ''State-specified license certification period.''

Comment 7: A commenter recommended that we change § 80.10(a)(1)(ii) from ''corresponds with or includes the State's fiscal year or license year'' to ''must be the State's fiscal year or license year.''

Response 7: We changed the rule so that § 80.10(a)(1)(ii) now reads, ''is either the State's fiscal year or license year,'' which closely follows the language of the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act.

Comment 8: A commenter stated that the certification period is too complicated, and recommended that we request data for the most recently completed license year (as defined by the State, but not to exceed 1 year) when the Service annually requests certified license numbers.

Response 8: Our ability to provide a less complicated license certification period is limited by the apportionment formulas in the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. These formulas require that we use the number of paid license holders of each State ''in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments. * * * '' The Acts clarify that the license certification period must be 12 consecutive months and ''shall be a State's fiscal or license year.'' We did not change the proposed rule as a result of this comment.

Comment 9: A commenter expressed support for proposed § 80.10(a)(1), which requires that each director of a State fish and wildlife agency specify a 12-month license certification period. Another commenter stated that States should select the 12-month license certification period and it should be consistent from year to year. Another commenter recommended that the Service approve changes in the license certification period. Another commenter recommended that States notify the Service before any change in the license certification period and provide justification.

Response 9: The proposed rule provides that each director of a State fish and wildlife agency specify an accounting period within the timeframe provided by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. We redesignated proposed § 80.10(a)(1)(iii) as § 80.10(a)(1)(iv) and added a new § 80.10(a)(1)(iii) that reads, ''Is consistent from year to year; and.'' We also redesignated proposed § 80.10(a)(2) as § 80.10(a)(3) and added a new § 80.10(a)(2) that states, ''Obtain the Director's approval before changing the State-specified license certification period; and''.

Comment 10: Nine commenters recommended that we allow the use of the most recent calendar year as the license certification year.

Response 10: We analyzed the wording necessary to implement the suggestion. Our review indicated that some State license certification periods are such that these States would not have sufficient time to obtain the license data, analyze it, and certify their numbers to the Director. Therefore, we did not make any changes in the proposed rule as a result of these comments.

Comment 11: Eight commenters recommended that we replace the term ''purchased licenses'' with ''paid licenses'' to conform to the term used in the Pittman-Robertson Wildlife

Restoration Act and the Dingell-Johnson Sport Fish Restoration Act.

Response 11: We accepted the recommendation and replaced ''purchased licenses'' with ''paid licenses'' in § 80.10(a) and (b) of the proposed rule.

Comment 12: Several commenters stated that the proposed timeframe for the license certification period and the transition from ''year-valid'' licenses to ''year-sold'' licenses will: (a) Cause inconsistencies with past reporting; (b) require the re-use of data during the transition year; or (c) significantly affect the certified numbers of license holders in the transition year.

Response 12: The commenters' assessments may apply to some States and are the unavoidable results of making this transition to uniform certification standards. Their comments substantiated the need to bring a consistent timeframe to this process. We did not change the proposed rule as a result of these comments.

Comment 13: A commenter recommended that we rewrite § 80.10(a)(2) believing that it is awkward and inconsistent with § 80.10(b)(3). Another commenter stated that § 80.10(a)(2)'s reference to ''The number of people in that State * * * '' may unintentionally exclude nonresident license holders.

Response 13: We accepted the recommendations and changed the proposed rule by rewriting § 80.10(a)(2)(i) and (ii) (redesignated as § 80.10(a)(3)(i) and (ii) by Response 9) as follows:

''(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-specified license certification period.''

Comment 14: Several commenters recommended that we change § 80.10(b)(1) to indicate that a State may count (a) trapping licenses that also permit licensees to hunt furbearers and (b) commercial fishing licenses that also permit recreational fishing.

Response 14: We accepted the recommendation. We changed the proposed rule by changing the second sentence of § 80.10(b)(1) to: ''The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities.''

Comment 15: Two commenters specifically supported the proposed requirement that States count only those persons who possess a license that produced net revenue, which is an amount of at least $1 per year returned to the State fish and wildlife agency. Another commenter supported it for single-year licenses, but expressed concern about differences among the States in how they quantify annual net revenue for lifetime licenses. Another commenter recommended the removal of the $1 minimum net revenue requirement and recommended that States be allowed to count licenses that produce any net revenue.

Response 15: Although the amount of net revenue would vary from State to State, we settled on $1 as a reasonable, consistent benchmark amount to determine that net revenue accrues to a State. We did not change the proposed rule as a result of these comments.

Comment 16: Four commenters recommended changes in § 80.10(b)(2). Two of the four recommended that we not require that a license produce net revenue to be returned to the State fish and wildlife agency because this would allow a State to buy licenses to enhance the fish and wildlife agency's apportionment. One stated that this could have unforeseen consequences, and the other stated that allowing the State to buy licenses was against Federal law. Two other commenters recommended that we clarify § 80.10(b)(2), and one recommended specific language indicating that the States may deduct average direct sales costs to arrive at a net revenue amount but may not deduct indirect sales costs.

Response 16: We accepted the first two commenters' recommendation and deleted the words ''fish and wildlife agency'' from proposed § 80.10(b)(2). We did not accept the specific language offered by one commenter on average direct sales costs and indirect sales costs. However, we replaced the language of proposed § 80.10(b)(2) with: ''The State may count only those persons who possess a license that produced net revenue of at least $1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents' or sellers' fees and the cost of printing, distribution, and control.'' We also changed ''people'' to ''persons'' wherever it occurs in § 80.10(b) for purposes of consistent usage.

Comment 17: A commenter recommended that we clarify the proposed rule to ensure that hunters and anglers who have free licenses, but also have revenue-generating game tags, bird stamps, or fish tags/harvest cards will count as persons possessing paid licenses for license certification.

Response 17: We will request a Solicitor's interpretation on this State-specific issue and distribute it to the affected States. We did not change the proposed rule as a result of this comment.

Comment 18: Three commenters disagreed with or had concerns about proposed § 80.10(b)(3). This provision would allow State fish and wildlife agencies to count only those persons possessing a single-year license in the license certification year in which it was purchased. One of the three commenters stated that the proposed rule goes beyond the law on this point because the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act refer to ''paid license holders,'' but do not refer to *when* the license holders purchased their licenses. This commenter also stated that the proposed rule was arbitrary by applying one set of conditions to persons possessing licenses valid for less than 2 years and a different set of conditions to persons possessing licenses valid for more than 2 years. One of the three commenters stated that reporting license sales in the year sold would require a separate tracking process. Two other commenters stated that this proposed requirement would not allow States to count licensees who renew their licenses immediately before expiration. Finally, two other commenters specifically supported the proposed requirement that States count only those persons possessing a single-year license in the license certification year in which it was purchased.

Response 18: We do not believe that proposed § 80.10(b)(3) is inconsistent with the language of the Pittman-Robertson Wildlife Restoration Act and Dingell-Johnson Sport Fish Restoration Act. This effort to reduce inconsistencies among the States may affect some States more than others during the transition period. However, we do not believe that any losses that may result from this final rule will be significant. We did not change the proposed rule as a result of these comments.

Comment 19: Three commenters supported the proposed requirement in § 80.10(b)(4) to count only those persons who possess multiyear licenses and who would otherwise be required to have a license. Another commenter supported the proposed requirement, but only if the license revenues from persons not counted as certified license holders are protected by § 80.4 on diversion of license fees. Twelve commenters did not agree with the proposed requirement. Two of the 12 stated that

by counting only those persons who possess multiyear licenses and who would otherwise be required to have a license, we would negatively affect efforts to get seniors and young people to buy licenses to support wildlife conservation. One of the 12 commenters stated that the proposed requirement would cause many hunters and anglers to be excluded from the certified number of license holders. This would result in a loss of funds for the agency. The same commenter also stated that trying to determine if a multiyear license holder would otherwise be required to have a license would be a burdensome new compliance cost. Several commenters recommended that we remove ''anywhere'' from § 80.10(b)(4)(i–iii). Most expressed concern about the implications of the use of ''anywhere'' for counting fishing licenses specific to freshwater or saltwater. Finally, several commenters recommended that we clarify the meaning of ''commensurate'' in § 80.10(b)(4)(ii) on multiyear licenses.

Response 19: In response to the expressed concerns, we removed the requirement that a multiyear licensee would otherwise be required to have a paid license to hunt or fish anywhere in the State. We also replaced ''commensurate'' in proposed § 80.10(b)(4)(ii) with ''in close approximation.'' To make the final rule reflect these changes, we deleted proposed § 80.10(b)(4)(i), redesignated proposed § 80.10(b)(4)(ii) as § 80.10(b)(4)(i), and redesignated proposed § 80.10(b)(4)(iii) as § 80.10(b)(4)(ii). We changed the redesignated § 80.10(b)(4)(i) to read, ''The net revenue from the license is in close approximation with the number of years in which the license is legal.'' We changed ''valid'' to ''legal'' in § 80.10(b)(3) for purposes of consistency with the change in the redesignated § 80.10(b)(4)(i). For the same reason, we changed the introductory statement of § 80.10(b)(4) to read, ''The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal whether it is legal for a specific or indeterminate number of years.'' Finally, we changed the redesignated § 80.10(b)(4)(ii) to read, ''The State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder.'' (See Response 20 on the use of ''other techniques approved by the Director.'')

Comment 20: Several commenters said that the ''statistical sampling or other appropriate techniques'' required in § 80.10(b)(4)(iii) (redesignated as § 80.10(b)(4)(ii) by Response 19) and § 80.10(c) is either unnecessary, too expensive, or vague. One commenter recommended the use of life expectancy tables. Another recommended that a joint Federal/State committee be charged with developing a fair and simple technique for determining license status that would include clarifying or replacing ''statistical sampling or other appropriate techniques.''

Response 20: We do not agree that statistically valid samples are unnecessary or too expensive. We agree that ''other appropriate techniques'' may be too vague. We replaced ''other appropriate techniques'' in proposed § 80.10(b)(4)(iii) (redesignated as § 80.10(b)(4)(ii) by Response 19) and proposed § 80.10(c) with ''other techniques approved by the Director.'' Under this change, States may seek the Director's approval for the use of life expectancy tables.

Comment 21: A commenter expressed support for § 80.10(b)(5) on combination licenses. Another commenter recommended that we count a combination license to fish or hunt only if the State provides an option to purchase a less-expensive license to hunt or fish. If a separate less-expensive license is not available, a State would, by design, force persons who might not hunt or fish to be counted as hunters or anglers, in effect giving this privilege free to those who might not want or need it. If there is not an option to purchase a less-expensive separate hunting or fishing license, the State would have to use a survey or other means to determine what proportion bought the license to fish and what proportion bought the license to hunt.

Response 21: We reviewed the hunting, fishing, and combination license fees for several States. Based on that review, we have not seen any indication that a State is using combination licenses to increase the numbers of hunters or anglers for license certification purposes. Until we determine that this practice is occurring, we will not address this issue through regulation. We did not change the proposed rule as a result of this comment.

Comment 22: A commenter recommended that we add language to ensure that the Service remains the lead in initiating the certification process.

Response 22: We deleted proposed § 80.10(d) and changed § 80.10(c) to the following: ''The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose.'' The above change required the redesignation of proposed § 80.10(e) as § 80.10(d).

Comment 23: A commenter recommended that the Service adjust the certified information on persons holding hunting and fishing licenses if the Service made an error.

Response 23: We accepted the recommendation and added this sentence to the redesignated § 80.10(d): ''However, the Director may correct an error made by the Service.''

Section 80.14 Application of Wildlife and Sport Fish Restoration Program Funds

Comment 24: A commenter recommended that we revise the first sentence in proposed § 80.14(b)(1) so that it would read: ''When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal funds not derived from license revenues.''

Response 24: We changed the proposed rule as recommended.

Comment 25: A commenter asked that we change the proposed rule to add language referenced in a 2002 Director's memorandum on revenues generated by timber sales on lands acquired under financial assistance awards in the Wildlife Restoration and Sport Fish Restoration programs.

Response 25: The proposed rule did not address this issue. We will defer it to a future rulemaking process so that we can invite the public to review the proposed language and provide comments.

Section 80.15 Allowable Costs

Comment 26: A commenter stated that the question-and-answer format of § 80.15 on allowable costs is inconsistent with other sections of 50 CFR 80.

Response 26: The proposed rule did not address this issue. We will defer consideration of a format change to a future rulemaking process so that we can invite the public to review the

proposed changes and provide comments.

Section 80.24 Recreational Boating Access Facilities

Comment 27: Eight commenters recommended that we add to § 80.24, ''The State may fund access facilities for nonmotorized boats where use of power boats is restricted or sites for power boats are not available.'' Another commenter indicated that the proposed rule had moved away from the language and intent of the Dingell-Johnson Sport Fish Restoration Act by limiting funding to power boats. Another commenter stated that we should allow funding for non-motor boats and replace the last sentence of § 80.24 with, ''Any portion of the 15-percent set aside for the above purposes that remains unexpended or unobligated after 2 years be allowed for the State to obligate for nonmotorized projects that support recreational sport fishing.'' Another commenter recommended that we rewrite § 80.24 to reflect the requirements of the Act and how these requirements are administered by the Service and the States. This same commenter recommended that a new version of § 80.24 be reviewed again through public comment before being finalized. Another commenter recommended that we address only the time-sensitive and noncontroversial issues, such as State certification of licenses, and withdraw § 80.24 and § 80.28. The commenter recommended that we refer these issues to the Joint Federal/State Task Force on Federal Assistance Policy for further review.

Response 27: The language on power boats has been in 50 CFR 80 since 1985. We will defer consideration of any changes in the recreational and power boating language to a future rulemaking process. This will allow us to consult with others on the proposed language and invite the public to review the proposed language and provide comments.

Comment 28: One commenter stated that the first sentence of § 80.24 in the proposed rule is incorrect. It reads, ''The State must allocate at least 15 percent of each annual apportionment under the annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities.'' The commenter suggested that we change the proposed rule to make it consistent with the following language of section 8(b)(1) of the Dingell-Johnson Sport Fish Restoration Act, ''States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5-year period.'' Nine commenters also pointed out that the last sentence of proposed § 80.24 should specify 5 years instead of 2 years to be consistent with the Dingell-Johnson Sport Fish Restoration Act.

Response 28: In response to the comments, we added the following sentence immediately after the first sentence of proposed § 80.24, ''However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director.'' We replaced the last sentence of proposed § 80.24 with the following: ''Any portion of a State's 15-percent set aside for the above purposes that remains unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.'' We also added ''except as provided in § 80.24'' to the end of the first sentence in § 80.8, which will now read, ''Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in § 80.24.'' Finally, we changed the second sentence of § 80.8 to read, ''For the purposes of this section, funds become available when the Regional Director approves the grant.'' We made this change because the wording of that sentence in the current regulations does not adequately describe when obligation occurs, and the term ''project agreement'' is not a standard term.

Section 80.28 Exceptions

Comment 29: Eleven commenters recommended that we withdraw proposed § 80.28, which would allow the Director to authorize exceptions to any provisions of 50 CFR 80 that are not explicitly required by law. Two commenters recommended that we withdraw § 80.28 to allow for further discussion. Five commenters recommended that we modify the exception authority with one or more of the following: (a) Add specific qualifiers; (b) limit and specify circumstances in which the Director can make exceptions; (c) include standards and triggering events that would establish parameters for exercising this authority; (d) indicate which provisions of 50 CFR 80 that the Director's exception authority would apply to and which are required by law; and (e) include the process and criteria to be followed for making exceptions including feedback from the States and the process for notifying States of exceptions. Three commenters expressed unqualified support for proposed § 80.28.

Response 29: We deleted proposed § 80.28 in response to the expressed concerns.

Changes of the Proposed Rule

We are making 25 changes in this final rule as a result of the public comments that we summarized in the preceding section:

1. Delete ''(U.S. Fish and Wildlife Service)'' from the definition of ''*Director.*'' and replace it with ''Service.'' in § 80.1.

2. Delete ''*Resident hunter.* One who hunts within the same State where legal residence is maintained.'' in § 80.1. (Response 4)

3. Add ''*Service.* The U.S. Fish and Wildlife Service.'' to § 80.1.

4. Change § 80.8 to read ''Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in § 80.24. For the purposes of this section, funds become available when the Regional Director approves the grant.'' (Response 28)

5. Change the section heading of § 80.10 from ''State Certification of Licenses.'' to ''State certification of licenses.''

6. Replace ''accounting period'' with ''license certification period'' in § 80.10(a)(1). (Response 6)

7. Replace ''State-specified period'' in § 80.10(a)(2) (redesignated as § 80.10(a)(3) by Response 9) and ''State specified 12-month period'' in § 80.10(b) with ''State-specified license certification period.'' (Response 6)

8. Change § 80.10(a)(1)(ii) from ''corresponds with or includes the State's fiscal year or license year'' to ''Is either the State's fiscal year or license year.'' (Response 7)

9. Delete ''and'' at the end of § 80.10(a)(1)(ii); redesignate § 80.10(a)(1)(iii) as § 80.10(a)(1)(iv); and add a new § 80.10(a)(1)(iii) that reads, ''Is consistent from year to year; and''. (Response 9)

10. Delete ''and'' at the end of the redesignated § 80.10(a)(1)(iv); redesignate § 80.10(a)(2) as § 80.10(a)(3); and add a new § 80.10(a)(2) that reads, ''Obtain the Director's approval before changing the State-specified license certification period; and''. (Response 9)

11. Replace ''purchased licenses'' with ''paid licenses'' in § 80.10(a) and (b). (Response 11)

12. Change redesignated § 80.10(a)(3)(i) and (ii) to:

''(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during

the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-certified license certification period.'' (Response 13)

13. Change ''people'' to ''persons'' in the introductory statement of § 80.10(b) and in § 80.10(b)(5).'' (Response 16)

14. Change the second sentence of § 80.10(b)(1) to: ''The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities.'' (Response 14)

15. Delete the words ''fish and wildlife agency'' from § 80.10(b)(2). (Response 16)

16. Replace § 80.10(b)(2) with: ''The State may count only those persons who possess a license that produced net revenue of at least $1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents' or sellers' fees and the cost of printing, distribution, and control.'' (Response 16)

17. Change ''valid'' to ''legal'' in § 80.10(b)(3). (Response 19)

18. Replace that part of the introductory sentence before the colon in § 80.10(b)(4) with, ''The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal whether it is legal for a specific or indeterminate number of years.'' (Response 19)

19. Delete § 80.10(b)(4)(i). Redesignate § 80.10(b)(4)(ii) as § 80.10(b)(4)(i). Redesignate § 80.10(b)(4)(iii) as § 80.10(b)(4)(ii). Change redesignated § 80.10(b)(4)(i) to read, ''The net revenue from the license is in close approximation with the number of years in which the license is legal; and''. Change redesignated § 80.10(b)(4)(ii) to read, ''The State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder.'' (Response 19)

20. Delete proposed § 80.10(d) and change § 80.10(c) to the following: ''The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose.'' Redesignate § 80.10(e) as § 80.10(d). (Responses 20 and 22)

21. Delete ''State fish and wildlife'' after ''other than the'' in redesignated § 80.10(d) and add this sentence to the end of § 80.10(d): ''However, the Director may correct an error made by the Service.'' (Response 23)

22. Add to the first sentence in § 80.14(b)(1) ''not derived from license revenues.'' (Response 24)

23. Add the following sentence immediately after the first sentence of proposed § 80.24, ''However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director.'' (Response 28)

24. Replace the last sentence of § 80.24 with the following, ''Any portion of a State's 15-percent set aside for the above purposes that remains unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.'' (Response 28)

25. Delete § 80.28, Exceptions. (Response 29)

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

OMB has determined that this rule is not a significant regulatory action under the criteria in Executive Order (E.O.) 12866. These criteria are:

(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.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities, i.e., small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that the rule will not have a significant economic impact on small entities because the changes we are making are intended to: (a) Address changes in law and regulation; (b) clarify rules on license certification to address a greater number of licensing choices that States and other jurisdictions have offered hunters and anglers; (c) delete provisions on audits and records that are addressed in other regulations; and (d) reword the regulations to make them easier to understand. No costs are associated with this regulatory change. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities.

(a) This rule will not have an annual effect on the economy of $100 million or more.

(b) This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

(c) This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

(a) This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The programs governed by the current regulations assist small governments financially, and this rule will simply improve these regulations.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a

''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications because it does not contain a provision for taking private property. Therefore, a takings implication assessment is not required.

Federalism (E.O. 13132)

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage themselves or their funds. We work closely with the States in administration of these programs. The rule will benefit recipients in three grant programs by establishing a common approach and clarifying the rules applicable to grant recipients' legally required annual certification of the number of hunters and anglers who purchased licenses.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule will also benefit grantees by eliminating unnecessary or outdated elements of the regulations governing the affected programs and by making the regulations easier to understand.

Paperwork Reduction Act

We examined the rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number. The rule will clarify 50 CFR 80.10, which requires States to submit information on the number of persons holding hunting and fishing licenses. On January 25, 2007, OMB approved our collection of information from States based on the requirements of 50 CFR 80.10. OMB approved this information collection on forms FWS 3–154a and 3–154b under control number 1018–0007. The rule will not change the information items required on forms FWS 3–154a and 3–154b. It will only establish a common approach for States to assign license holders to a license year for purposes of the information collection. The rule will also remove outdated information in 50 CFR 80.27.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act, 42 U.S.C. 432–437(f), and part 516 of the Departmental Manual. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required due to the categorical exclusion for administrative changes provided at 516 DM 2, Appendix 1, section 1.10.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we evaluated potential effects on federally recognized Indian Tribes and determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds.

Energy Supply, Distribution, or Use (E.O. 13211)

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

List of Subjects in 50 CFR Part 80

Aquatic resource education, Boating access, Fish, Grant programs—natural resources, Hunter education and safety, License certification, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

Final Regulation

■ For the reasons stated in the preamble, we amend part 80 of subchapter F, chapter I, title 50 of the Code of Federal Regulations, as follows:

Subchapter F—Financial Assistance—Wildlife and Sport Fish Restoration Program

■ 1. Revise the heading of subchapter F to read as set forth above.

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS

■ 2. The authority citation for part 80 is revised to read as follows:

Authority: 16 U.S.C. 777–777n; 16 U.S.C. 669–669k; 18 U.S.C. 701.

■ 3. Revise the heading of part 80 to read as set forth above.

■ 4. Revise § 80.1 to read as follows:

§ 80.1 Definitions.

As used in this part, the following terms have these meanings:

Common horsepower. Any size motor that can be reasonably accommodated on the body of water slated for development.

Comprehensive fish and wildlife management plan. A document describing the State's plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

Director. The Director of the Service, or his or her designated representative. The Director serves as the Secretary's representative in matters relating to the administration and execution of the Wildlife and Sport Fish Restoration Acts.

Project. One or more related undertakings necessary to fulfill a need or needs, as defined by the State, and consistent with the purposes of the appropriate Act.

Regional Director. The regional director of any region of the Service, or his or her designated representative.

Resident angler. One who fishes within the same State where legal residence is maintained.

Secretary. The Secretary of the Interior or his or her designated representative.

Service. The U.S. Fish and Wildlife Service.

State. Any State of the United States and the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa. References to ''the 50 States'' pertain only to the 50 States of the United States and do not include these other six areas.

State fish and wildlife agency. The agency or official of a State designated under State law or regulation to carry out the laws of the State in relation to the management of fish and wildlife resources of the State. Such an agency or official also designated to exercise collateral responsibilities, e.g., a State

Department of Natural Resources, will be considered the State fish and wildlife agency only when exercising the responsibilities specific to the management of the fish and wildlife resources of the State.

Wildlife and Sport Fish Restoration Acts or *the Acts.* Pittman-Robertson Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U.S.C. 669–669k), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950, as amended (64 Stat. 430; 16 U.S.C. 777–777n).

Wildlife and Sport Fish Restoration Program Funds. Funds provided under the Acts.

■ 5. Amend § 80.2 by revising paragraphs (a) and (b) to read as follows:

§ 80.2 Eligibility.

* * * * *

(a) Dingell-Johnson Sport Fish Restoration—Any of the States as defined in § 80.1.

(b) Pittman-Robertson Wildlife Restoration—Any of the States as defined in § 80.1, except the District of Columbia.

§ 80.4 [Amended]

■ 6. Amend paragraph (a)(4) of § 80.4 by removing the words ''Federal Aid project'' and adding in their place the word ''Project''.

§ 80.5 [Amended]

■ 7. Amend § 80.5 by:

■ a. In paragraph (a), removing the words ''Federal Aid in'' and adding in their place the words ''Pittman-Robertson''; and

■ b. In paragraph (b), removing the words ''Federal Aid in'' and adding in their place the words ''Dingell-Johnson''.

■ 8. Revise § 80.8 to read as follows:

§ 80.8 Availability of funds.

Funds are available for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year except as provided in § 80.24. For the purposes of this section, funds become available when the Regional Director approves the grant.

§ 80.9 [Amended]

■ 9. Amend paragraph (b) of § 80.9 by removing the words ''Federal Aid'' and adding in their place the words ''Wildlife and Sport Fish Restoration Program''.

■ 10. Revise § 80.10 including the section heading to read as follows:

§ 80.10 State certification of licenses.

(a) To ensure proper apportionment of Federal funds, the Service requires that each director of a State fish and wildlife agency:

(1) Specify a license certification period that:

(i) Is 12 consecutive months in length;

(ii) Is either the State's fiscal year or license year;

(iii) Is consistent from year to year; and

(iv) Ends no less than 1 year and no more than 2 years before the beginning of the Federal fiscal year that the apportioned funds first become available for expenditure;

(2) Obtain the Director's approval before changing the State-specified license certification period; and

(3) Annually provide to the Service the following data:

(i) The number of persons who hold paid licenses that authorize an individual to hunt in the State during the State-specified license certification period; and

(ii) The number of persons who hold paid licenses that authorize an individual to fish in the State during the State-specified license certification period.

(b) When counting persons holding paid hunting or fishing licenses in a State-specified license certification period, a State fish and wildlife agency must abide by the following requirements:

(1) The State may count all persons who possess a paid license that allows the licensee to hunt or fish for sport or recreation. The State may not count persons holding a license that allows the licensee only to trap animals or only to engage in commercial activities.

(2) The State may count only those persons who possess a license that produced net revenue of at least $1 per year returned to the State after deducting costs directly associated with issuance of the license. Examples of such costs are agents' or sellers' fees and the cost of printing, distribution, and control.

(3) The State may count persons possessing a single-year license (one that is legal for less than 2 years) only in the State-specified license certification period in which the license was purchased.

(4) The State may count persons possessing a multiyear license (one that is legal for 2 years or more) in each State-specified license certification period in which the license is legal, whether it is legal for a specific or indeterminate number of years, only if:

(i) The net revenue from the license is in close approximation with the number of years in which the license is legal, and

(ii) The State fish and wildlife agency uses statistical sampling or other techniques approved by the Director to determine whether the licensee remains a license holder.

(5) The State may count persons possessing a combination license (one that permits the licensee to both hunt and fish) with:

(i) The number of persons who hold paid hunting licenses in the State-specified license certification period, and

(ii) The number of persons who hold paid fishing licenses in the same State-specified license certification period.

(6) The State may count persons possessing multiple hunting or fishing licenses (in States that require or permit more than one license to hunt or more than one license to fish) only once with:

(i) The number of persons who hold paid hunting licenses in the State-specified license certification period, and

(ii) The number of persons who hold paid fishing licenses in the same State-specified license certification period.

(c) The director of the State fish and wildlife agency must provide the certified information required in paragraphs (a) and (b) of this section to the Service by the date and in the format that the Director specifies. If the Director requests it, the director of the State fish and wildlife agency must provide documentation to support the accuracy of this information. The director of the State fish and wildlife agency is responsible for eliminating multiple counting of single individuals in the information that he or she certifies and may use statistical sampling or other techniques approved by the Director for this purpose.

(d) Once the Director approves the certified information required in paragraphs (a) and (b) of this section, the Service must not adjust the numbers if such adjustment would adversely impact any apportionment of funds to a State fish and wildlife agency other than the agency whose certified numbers are being adjusted. However, the Director may correct an error made by the Service.

■ 11. Revise § 80.11 to read as follows:

§ 80.11 Submission of proposals.

A State may apply to use funds apportioned under the Acts by submitting to the Regional Director either a comprehensive fish and wildlife management plan or grant proposal.

(a) Each application must contain such information as the Regional Director may require to determine if the proposed activities are in accordance with the Acts and the provisions of this part.

(b) The State must submit each application and amendments of scope to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A–95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or an official delegated to exercise the authority and responsibilities of the State director in committing the State to participate under the Acts. The director of each State fish and wildlife agency must notify the Regional Director, in writing, of the official(s) authorized to sign the Wildlife and Sport Fish Restoration Program documents, and any changes in such authorizations.

■ 12. Amend § 80.12 by revising the introductory paragraph and paragraph (b) as follows:

§ 80.12 Cost sharing.

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the grant, whichever is less, except that the non-Federal cost sharing for the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa must not exceed 25 percent and may be waived at the discretion of the Regional Director.

* * * * *

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions.

* * * * *

■ 13. Revise § 80.14 to read as follows:

§ 80.14 Application of Wildlife and Sport Fish Restoration Program funds.

(a) States must apply Wildlife and Sport Fish Restoration Program funds only to activities or purposes approved by the Regional Director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Wildlife and Sport Fish Restoration Program funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal funds not derived from license revenues. Replacement property must be of equal value at current market prices and with equal benefits as the original property. The State may have up to 3 years from the date of notification by the Regional Director to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes that interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the Regional Director, the property must be used or disposed of as provided by 43 CFR 12.71 or 43 CFR 12.932.

(c) Wildlife and Sport Fish Restoration Program funds cannot be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities must be accounted for in the project records and disposed of as directed by the Director.

■ 14. Amend § 80.15 by revising paragraphs (c), (d), and (f) to read as follows:

§ 80.15 Allowable costs.

* * * * *

(c) *Are costs allowable if they are incurred prior to the date of the grant?* Costs incurred prior to the effective date of the grant are allowable only when specifically provided for in the grant.

(d) *How are costs allocated in multipurpose projects or facilities?* Projects or facilities designed to include purposes other than those eligible under either the Dingell-Johnson Sport Fish Restoration or Pittman-Robertson Wildlife Restoration Acts must provide for the allocation of costs among the various purposes. The method used to allocate costs must produce an equitable distribution of costs based on the relative uses or benefits provided.

* * * * *

(f) *How much money may be obligated for aquatic resource education and outreach and communications?*

(1) Each of the 50 States may spend no more than 15 percent of the annual amount apportioned to it under the provisions of the Dingell-Johnson Sport Fish Restoration Act for an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms.

(2) The Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the appropriate Regional Director.

§ 80.16 Payments.

■ 15. Amend § 80.16 by:

■ a. Revising the section heading as set forth above;

■ b. Removing the word ''shall'' wherever it appears and adding in its place the word ''must''; and

■ c. Removing the words ''regional director'' and ''region director'' wherever they appear and adding in their place the words ''Regional Director''.

■ 16. Revise § 80.17 to read as follows:

§ 80.17 Maintenance.

The State is responsible for maintenance of all capital improvements acquired or constructed with Wildlife and Sport Fish Restoration Program funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with funds other than funds from the Wildlife and Sport Fish Restoration Program are allowable costs when such improvements are necessary for accomplishment of project purposes as approved by the Regional Director and when such costs are otherwise allowable by law.

§ 80.19 [Removed]

■ 17. Remove and reserve § 80.19.

§ 80.20 [Amended]

■ 18. Amend § 80.20 by removing the words ''Federal Aid'' and adding in their place the words ''Wildlife and Sport Fish Restoration Program''.

§ 80.22 [Removed]

■ 19. Remove and reserve § 80.22.

■ 20. Amend § 80.23 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 80.23 Allocation of funds between marine and freshwater fishery projects.

(a) Each coastal State, to the extent practicable, must equitably allocate those funds specified by the Secretary, in the apportionment of the Dingell-Johnson Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut,

Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington; the territories of Guam, the U.S. Virgin Islands, and American Samoa; and the Commonwealths of Puerto Rico and the Northern Mariana Islands.

* * * * *

■ 21. Revise § 80.24 to read as follows:

§ 80.24 Recreational boating access facilities.

The State must allocate 15 percent of each annual apportionment under the Dingell-Johnson Sport Fish Restoration Act for recreational boating access facilities. However, a State may allocate more or less than 15 percent of its annual allocation with the approval of the Service's Regional Director. Although a broad range of access facilities and associated amenities can qualify for funding under the 15-percent provision, the State must accommodate power boats with common horsepower ratings, and must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of a State's 15-percent set aside for the above purposes that remain unexpended or unobligated after 5 years must revert to the Service for apportionment among the States.

§ 80.25 [Amended]

■ 22. Amend § 80.25 by:

■ a. In the section heading and paragraph (a), removing the words ''Federal Aid in'' and adding in their place the words ''Dingell-Johnson''; and

■ b. In paragraphs (a)(1) and (a)(2), removing the word ''Aid''.

■ 23. Amend § 80.26 by revising the text of the introductory paragraph and paragraphs (b), (f) introductory text, (g) introductory text, and (h) introductory text to read as set forth below:

§ 80.26 Symbols.

We have prescribed distinctive symbols to identify projects funded by the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act and items on which taxes and duties have been collected to support the respective Acts.

* * * * *

(b) Other persons or organizations may use the symbol(s) for purposes related to the Wildlife and Sport Fish Restoration Program as authorized by the Director. Authorization for the use of the symbol(s) will be by written agreement executed by the Service and the user. To obtain authorization, submit a written request stating the specific use and items to which the symbol(s) will be applied to Director, U.S. Fish and Wildlife Service, Washington, DC 20240.

* * * * *

(f) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act is below. * * *

(g) The symbol pertaining to the Dingell-Johnson Sport Fish Restoration Act is below. * * *

(h) The symbol pertaining to the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act when used in combination is below.

* * *

■ 24. Revise § 80.27 to read as follows:

§ 80.27 Information collection requirements.

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777–777n) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669–669k). The Service may not conduct or sponsor, and applicants or grantees are not required to respond to, a collection of information unless the request displays a currently valid OMB control number. OMB has approved our collection of information under OMB control number 1018–0007. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Wildlife and Sport Fish Restoration Program.

(b) Submit comments on the accuracy of the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: July 14, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–16829 Filed 7–23–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080220219–8829–02]

RIN 0648–AT77

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to a U.S. Navy Shock Trial

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), issues regulations to govern the unintentional taking of marine mammals incidental to conducting a Full Ship Shock Trial (FSST) of the USS MESA VERDE (LPD 19) in the waters of the Atlantic Ocean offshore of Mayport, FL. Authorization of incidental take is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on their availability for taking for subsistence uses. These regulations set forth the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stocks of marine mammals and their habitat, as well as monitoring and reporting requirements.

DATES: July 18, 2008 through July 18, 2013.

ADDRESSES: A copy of the Navy's MMPA application, containing a list of references used in this document, NMFS' Record of Decision (ROD), and other documents cited herein, may be obtained by writing to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

A copy of the Navy's Final Environmental Impact Statement/Overseas Environmental Impact Statement (Final EIS/OEIS) can be downloaded at: *http://www.mesaverdeeis.com*. A copy of the Navy's documents cited in this final rule may also be viewed, by

appointment, during regular business hours at the NMFS address provided here.

FOR FURTHER INFORMATION CONTACT: Ken Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the 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 a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). NMFS must promulgate regulations setting forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking.

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 (MRAs), such as the FSST, 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 25, 2007, NMFS received an application from the Navy requesting authorization for the taking of marine mammals incidental to its FSST during a 4-week period in the spring/summer of 2008 utilizing the USS MESA VERDE (LPD 19), a new amphibious transport dock ship. The shock trial of the USS MESA VERDE consists of up to four underwater detonations of a nominal 4,536 kilogram (kg) (10,000 pound (lb)) charge at a rate of one detonation per week. The purpose of the proposed action is to generate data that the Navy would use to assess the survivability of SAN ANTONIO Class amphibious transport dock ships. According to the Navy, an entire manned ship must undergo an at-sea shock trial to obtain survivability data that are not obtainable through computer modeling and component testing on machines or surrogates. Navy ship design, crew training, and survivability lessons learned during previous shock trials, and total ship survivability trials, have proven their value by increasing a ship's ability to survive battle damage. Because marine mammals may be killed, injured or behaviorally harassed incidental to conducting the FSST, regulations and an authorization under section 101(a)(5)(A) of the MMPA are required.

Background

According to the Navy, each new class of surface ships must undergo realistic survivability testing to assess the survivability of the hull and the ship's systems, and to evaluate the ship's capability to protect the crew from an underwater explosion. The Navy has developed the shock trial to meet its obligation to perform realistic survivability testing. A shock trial consists of a series of underwater detonations that propagate a shock wave through the ship's hull under deliberate and controlled conditions. The effects of the shock wave on the ship's hull, equipment, and personnel safety features are then evaluated. This information is used by the Navy to validate or improve the survivability of the SAN ANTONIO Class, thereby reducing the risk of injury to the crew, and damage to or loss of a ship. The proposed shock trial qualifies as a military readiness activity as defined in Section 315(f) of Public Law 107–314 (16 U.S.C. 703 note).

The USS MESA VERDE is the third ship in the new SAN ANTONIO (LPD 17) Class of nine planned amphibious transport dock ships being acquired by the Navy to meet Marine Air-Ground Task Force lift requirements. The ships of the SAN ANTONIO Class will be replacements for four classes of amphibious ships—two classes that have reached the end of their service life (LPD 4 and LSD 36) and two classes that have already been retired (LKA 113 and LST 1179)—replacing a total of 41 ships. These new LPDs are a means to support Marine Expeditionary Brigade (MEB) amphibious lift requirements. The mission of the SAN ANTONIO Class will be to operate in various scenarios, as a member of a three-ship, forward-deployed Amphibious Ready Group with a Marine Expeditionary Unit; in a variety of Expeditionary Strike Group scenarios; or as a member of a 12–14 ship MEB.

The USS MESA VERDE, would be exposed to a series of underwater detonations. The FSST is proposed to take place at a location at least 70 km (38 nm) off-shore of Naval Station Mayport within the Navy's Jacksonville/Charleston Operating Area over a four-week period in the summer of 2008, based on the Navy's operational and scheduling requirements for the ship class. The ship and the explosive charge will be brought closer together with each successive detonation to increase the severity of the shock to the ship. This approach ensures that the maximum shock intensity goal is achieved in a safe manner. A nominal 4,536 kg (10,000 lb) explosive charge would be used. This charge size is used to ensure that the entire ship is subjected to the desired level of shock intensity. The use of smaller charges would require many more detonations to excite the entire ship to the desired shock intensity level. The proposed shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the next detonation.

Three detonations would be required to collect adequate data on survivability and vulnerability. The first detonation would be conducted to ensure that the ship's systems are prepared for the subsequent higher severity detonations. The second detonation would be conducted to ensure the safety of the ship's systems during the third detonation, and to assess the performance of system configuration changes implemented as a result of the first detonation. The third and most severe detonation would be conducted to assess system configuration changes from the previous detonations. In the event that one of the three detonations does not provide adequate data, a fourth detonation may be required. As a result, the Navy's proposed action was analyzed as consisting of up to four detonations.

An operations vessel would tow the explosive charge in parallel with the USS MESA VERDE using the parallel tow method, as illustrated in Figure 1 of the Navy's Letter of Authorization (LOA) application. The charge would be located approximately 610 meters (m) (2,000 feet (ft)) behind the operations vessel and suspended from a pontoon at a depth of 61 m (200 ft) below the water surface. Co-located with the charge would be a transponder used to track

the exact location of the charge prior to detonation. After each detonation, the shock trial array and rigging debris would be recovered.

For each detonation, the USS MESA VERDE would cruise in the same direction as the operations vessel at a speed of up to 13 kilometers per hour (km/h) (up to 7 knots (kts or nm/hr)) with the charge directly abeam of it. After each detonation, an initial inspection for damage would be performed. The USS MESA VERDE would return to the shore facility for a detailed post-detonation inspection and to prepare for the next detonation. For each subsequent detonation, the USS MESA VERDE would move closer to the charge to experience a more intense shock level.

Comments and Responses

On April 11, 2008 (73 FR 19789), NMFS published a proposed rule on the Navy's application for an incidental take authorization and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30-day public comment period, NMFS received comments from the U.S. Marine Mammal Commission and from one member of the public. The comments of the individual did not address issues specific to NMFS' proposed action, so it is not addressed further in this final rule. The Commission concurs with NMFS' finding that the planned shock trial is unlikely to have more than a negligible, short-term impact on the potentially affected marine mammal species and stocks, provided that the planned mitigation measures are imposed. Specific recommendations of the Commission follow.

Comment 1: The Commission recommends that NMFS issue the requested authorization, subject to a requirement that operations be suspended immediately if more than the anticipated number of marine mammals are killed or injured incidental to the operations or if a dead or seriously injured North Atlantic right whale is found in the vicinity of the operations and the death or injury could have occurred incidental to the proposed activities. Suspension of operations should remain in place until NMFS (1) has determined that the death is not related to the shock testing activities, (2) has reviewed the situation and determined that further deaths or serious injuries are unlikely to occur, or (3) has revised the regulations to authorize additional takes under section 101(a)(5)(A) of the MMPA.

Response: Taking marine mammal species not authorized (e.g., North Atlantic right whales), by means not authorized (e.g., ship strike), and/or in numbers greater than authorized in the regulations, will result in at least a temporary suspension of the LOA while NMFS scientists investigate the mitigation and monitoring measures and recommend improvements to that program. While NMFS believes that the 1-week period between detonations will provide sufficient time to investigate any unauthorized takings and recommend a solution, future detonations may need to be delayed pending resolution.

Comment 2: The Commission agrees that the data used to estimate marine mammal density, seasonality of habitat use, and other relevant biological factors appear to be the latest and best data from NMFS and other sources. One exception involves the use of data collected jointly by NMFS and the Minerals Management Service (MMS) between 1996 and 2001, which is used instead of more recent data from the MMS' (sperm whale seismic study (Palka and Johnson, 2007). The final report for that program was published in 2007, and several related, peer-reviewed publications of sighting and tagging data also are available.

Response: The Navy's MMPA application for taking marine mammals incidental to conducting the FSST is for takings in the offshore waters of northern Florida and southern Georgia during the spring/summer of 2008. Sperm whales will not be found in these waters at this time of the year. As a result, the new analysis by Palka and Johnson (2007), which was conducted in waters north of Cape Hatteras, is not relevant to the current action. However, NMFS plans to merge the line transect data from Palka and Johnson (2007) with data collected during its previous surveys to investigate habitat preferences of sperm whales in the Atlantic Ocean. This new information will be used by NMFS and the Navy in future MMPA applications.

Comment 3: The Commission is concerned about the possible consequences of staging the shock tests in the DeSoto Canyon area because the canyon appears to support relatively high concentrations of sperm whales, beaked whales, and other deep-diving cetaceans.

Response: While the Navy's Draft EIS/OEIS identified offshore Norfolk, VA, Mayport, FL, and Pensacola, FL, as locations for conducting the shock trial, the Navy's application under section 101(a)(5)(A) of the MMPA requested an authorization for taking marine mammals in the offshore waters of Mayport, FL (the Navy's preferred alternative under its Final EIS/OEIS). As a result, the FSST will not take place in DeSoto Canyon, which is off the west coast of Florida.

Comment 4: The Commission recommends if the proposed shock trial cannot be completed before the end of summer 2008, that it be postponed until the spring or summer of 2009 to avoid the seasons when North Atlantic right whales are most likely to be present.

Response: During the 5-year effectiveness period of these final regulations, NMFS, through an LOA, will authorize take incidental to the Navy's proposed ship shock trial only during a period from May 1 through September 20, except in the case of 2008, where an LOA will authorize take only upon the effective date of the regulations, and in the case of 2013, where an LOA would authorize take only up until the regulations expire.

Comment 5: The Commission questions NMFS's view that temporary threshold shift (TTS) constitutes Level B harassment under the MMPA. The Commission continues to believe that an across-the-board definition of ''TTS'' as constituting no more than Level B harassment inappropriately dismisses the possibility that an affected animal may experience injury or biologically significant behavioral changes if its hearing is compromised, even temporarily. The Commission believes this constitutes Level A harassment under both the generally applicable definition of this term and applicability to military readiness activities. NMFS should revisit this issue and revise its interpretation of TTS to recognize the potential for Level A harassment due to secondary effects of temporary hearing loss.

Response: NMFS has addressed to this issue in several previous **Federal Register** notices in regards to potential impacts on marine mammals from explosives and sonar. Please see 70 FR 48675, 48677 (August 19, 2005) and 66 FR 22450 (May 4, 2001) for a detailed response.

Affected Marine Mammals

Up to 26 marine mammal species may be present in the waters off Mayport, FL: 4 species of mysticetes, 19 species of odontocetes, 2 species of pinnipeds, and 1 sirenian species (manatee). Mysticetes are unlikely to occur in this area during the spring or summer time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, 4 species of beaked whales, and 11 species of dolphins and porpoises. For detailed information on marine mammal

species, abundance, density estimates, and the methods used to obtain this information, reviewers are requested to refer to the Navy's LOA application, and Final EIS/OEIS for the Shock Trial of the USS MESA VERDE (see **ADDRESSES** for information on the availability of the Navy's LOA application and Final EIS/OEIS).

Potential Impacts to Marine Mammals

Potential impacts on the marine mammal species known to occur in the area offshore of Mayport, FL from shock testing include both lethal and non-lethal injury, as well as Level B harassment. NMFS concurs with the Navy that it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters due to the low initial concentrations and rapid dispersion of such by-products. NMFS concurs with the Navy also believe that no permanent alteration of marine mammal habitat would occur as a result of the detonations. The Navy's calculations (which include mitigation effectiveness) indicate that the FSST at the Mayport site, during summer, has the potential to result in up to 1 take by mortality, 2 Level A harassment takes (injuries), and 282 takings by Level B (behavioral) harassment across all species of odontocetes. Calculations by species are provided in the Navy's LOA application and summarized here.

Mortality and Injury

Marine mammals can be killed or injured by underwater explosions due to the response of air cavities, such as the lungs and bubbles in the intestines, to the shock wave. The criterion for mortality used by the Navy in its analysis for the proposed USS MESA VERDE shock trial is the onset of extensive lung hemorrhage. In this analysis, the acoustic exposure associated with onset of severe lung injury (extensive lung hemorrhage) is used to define the outer limit of the zone within which species are considered to experience mortality. Extensive lung hemorrhage is considered debilitating and potentially fatal as a result of air embolism or suffocation. For the predicted impact ranges, representative marine mammal body sizes (mean body mass values) and average lung volumes were established, relative densities identified, and species were subsequently grouped by size (i.e., mysticetes and sperm whales, large odontocetes, small odontocetes). Thresholds and associated ranges for the onset of severe lung injury are variable for each of these groups depending upon their mean body mass and lung volume. Tables 4 and 5 in the Navy's LOA application provide a list of the criterion with thresholds and ranges for each grouping by mean body mass.

In the Navy's analysis, all marine mammals within the calculated radius for onset of extensive lung injury (i.e., onset of mortality) are counted as lethal takes. The range at which onset of extensive lung hemorrhage is expected to occur is greater than the ranges at which 50 percent to 100 percent lethality would occur from closest proximity to the charge or from presence within the bulk cavitation region (see Tables 4 and 5 of the Navy's LOA application). The region of bulk cavitation is an area near the water surface above the detonation point in which the reflected shock wave creates a region of cavitation within which smaller animals would not be expected to survive. Because the range for onset of extensive lung hemorrhage for smaller animals tends beyond the range of bulk cavitation and because all injuries more serious than onset of extensive lung hemorrhage are considered lethal takes, all smaller animals within the region of cavitation and all animals (regardless of body mass) with more serious injuries than onset of extensive lung hemorrhage are accounted for in the lethal take estimate. The calculated maximum ranges for onset of extensive lung hemorrhage depend upon animal body mass, with smaller animals having the greatest potential for impact, as well as water column temperature and density. Appendix D of the USS MESA VERDE Final EIS/OEIS presents calculations that estimate the range for the onset of extensive lung hemorrhage.

For injury (Level A harassment), the criterion applied is permanent threshold shift (PTS), a non-recoverable injury that must result from the destruction of tissues within the auditory system (e.g., tympanic membrane rupture, disarticulation of the middle ear ossicles, and hair-cell damage). Onset-PTS is indicative of the minimum level of injury that would occur due to sound exposure. All other forms of trauma would occur closer to the sound source than the range at which the onset of PTS occurs. In this analysis, the smallest amount of PTS (onset-PTS) is taken to be the indicator for the smallest degree of injury that can be measured. The acoustic exposure associated with onset-PTS is an energy flux density (EL) of 198 decibel (dB) re 1 μPa^2-sec or greater for all mean body mass sizes. Appendix D of the USS MESA VERDE Final EIS/OEIS presents calculations that estimate the range for the onset of PTS in marine mammals exposed to detonations associated with the FSST.

Incidental Level B Harassment

In the Navy's LOA request and the accompanying USS MESA VERDE Final EIS/OEIS, TTS is used as the criterion for Level B (behavioral) harassment for marine mammals. As the Navy explains in the Final EIS/OEIS:

> Some physiological effects can occur that are non-injurious but which can potentially disrupt the behavior of a marine mammal. These include temporary distortions in sensory tissue that alter physiological function but which are fully recoverable without the requirement for tissue replacement or regeneration. For example, an animal that experiences a temporary reduction in hearing sensitivity suffers no injury to its auditory system, but may not perceive some sounds due to the reduction in sensitivity. As a result, the animal may not respond to sounds that would normally produce a behavioral reaction. This lack of response qualifies as a disruption of normal behavioral patterns—the animal is impeded from responding in a normal manner to an acoustic stimulus.

As explained in previous incidental take authorizations for explosions, the smallest measurable amount of TTS (onset-TTS) is taken as the best indicator for Level B (behavioral) harassment. Because it is considered non-injurious, the acoustic exposure associated with onset-TTS is used to define the outer limit of the range within which marine mammal species are predicted to experience Level B harassment attributable to physiological effects. This follows from the concept that hearing loss potentially affects an animal's ability to react normally to the sounds around it; it potentially disrupts normal behavior by preventing it from occurring. Therefore, the potential for TTS qualifies as a Level B harassment that is mediated by physiological effects upon the auditory system.

In this analysis, a dual criterion for onset-TTS has been developed by the Navy: (1) An energy-based TTS criterion of 183 dB re 1 μPa^2-sec EL, and (2) a pressure-based TTS criterion of 224 dB re 1 μPa (23 psi) received peak pressure. For additional information on the establishment of these criteria by the Navy and NMFS, please see Appendix D in the Final EIS/OEIS. If either threshold is met or exceeded, TTS is assumed to have occurred. The thresholds are primarily based on cetacean TTS data from Finneran *et al.* (2002). Because the impulsive sound exposures analyzed in this cetacean TTS data are similar to the sounds of interest for this analysis, they provide the data that are most directly relevant to this action. The predicted impact ranges

applied the more stringent criterion, in this case, the 183–dB re 1 μPa²-sec weighted energy flux density level.

Corresponding TTS ranges are listed in Table 5 in the Navy's LOA application. For onset-TTS, the more conservative of the two criteria was chosen for determining the range that defined the impact zone, regardless of water depth. Expected numbers of marine mammals within these radii were calculated using mean densities from Appendix B of the USS MESA VERDE Final EIS/OEIS. Mean density values were previously adjusted to account for submerged (undetectable) individuals. Because the range defining the zone in which onset-TTS is predicted is much larger than the range corresponding to mortality or injury, more individuals and more species could be affected. Marine mammal species known to occur at or near the proposed Mayport location, but not seen during aerial surveys used to develop density estimates (i.e., fin, humpback, minke, sperm, and North Atlantic right whales, and several dolphin species) and not expected to be present during the time of the year when the FSST will occur (summer), were not taken into account in these calculations. The results for individual species were rounded to the nearest whole number and then summed. For summations which were less than 0.5, calculations were rounded down to zero (see USS MESA VERDE Final EIS/OEIS, App. C).

Table 1 below (Table 7 in the Navy's LOA application) summarizes the mortality, injury, and harassment exposure estimates in summer, for the proposed Mayport location. The Navy estimates that for offshore Mayport, FL in summer 1 marine mammal (a bottlenose dolphin) will be killed and 2 injured (a bottlenose dolphin and a Risso's dolphin). Estimated numbers of marine mammals predicted to experience Level B harassment are 282 individual marine mammals at Mayport, FL in the summer.

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Table 1 : Exposure Estimates at the Proposed Mayport Location in Summer

	Summer - Number of Individuals (Four detonations, with protective measures)					
	Mortality		Injury		Harassment	
	Calc.	Round	Calc.	Round	Calc.	Round
MARINE MAMMALS						
Minke whale	0.000	0	0.000	0	0.000	0
North Atlantic right whale	0.000	0	0.000	0	0.000	0
Atlantic spotted dolphin	0.133	0	0.321	0	71.706	72
Beaked whales	0.016	0	0.212	0	7.039	7
Bottlenose dolphin	0.508	1	1.227	1	110.124	110
Common dolphin	0.000	0	0.000	0	0.000	0
Dwarf/pygmy sperm whale	0.087	0	0.209	0	9.147	9
False killer whale	0.000	0	0.003	0	0.159	0
Pilot whale	0.006	0	0.078	0	5.568	6
Risso's dolphin	0.370	0	0.894	1	62.241	62
Rough-toothed dolphin	0.000	0	0.001	0	0.000	0
Spinner dolphin	0.096	0	0.233	0	16.266	16
Total - Marine Mammals		**1**		**2**		**282**

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Potential Impact on Marine Mammal Habitat

As described in the Final EIS/OEIS, detonations would have only short-term, localized impacts on the water column's physical, chemical, and biological characteristics. No lasting or significant impact on marine mammal habitat is anticipated, and no restoration would be necessary. Therefore, we conclude that marine mammal habitat would not be affected.

Mitigation and Monitoring Measures

The operational site for the proposed shock trial off Mayport, FL would be a 3.5-nm (6.5-km) radius Safety Range centered on the explosive charge. The concept of Safety Range is an integral part of the Navy's protective measures plan, the purpose of which is to prevent death and injury to marine mammals (and sea turtles). The Safety Range for the Mayport location would be greater than the predicted maximum ranges for mortality and injury (onset PTS) associated with detonation of a 4,536 kg (10,000 lb) explosive (see Table 5 of the Navy's LOA application).

The Navy's proposed action includes mitigation and monitoring that would minimize risk to marine mammals, which NMFS included in its proposed rule. (Mitigation measures for sea turtles have been analyzed in the Navy's Final EIS/OEIS and addressed through consultation under section 7 of the Endangered Species Act (ESA) and issuance of a Biological Opinion on this action). The mitigation and monitoring measures that will be implemented to minimize risk to marine mammals are as follows:

(1) Through pre-detonation aerial surveys, the Navy will select a primary and two secondary test sites within the test area where, based on the results of aerial surveys conducted one day prior to the first detonation, observations indicate that marine mammal populations are the lowest;

(2) Pre-detonation aerial monitoring will be conducted on the day of each

detonation to evaluate the primary test site and verify that the 3.5 nm (6.5 km) Safety Range is free of visually detectable marine mammals (and other critical marine life). If marine mammals are detected in the primary test area, the Navy will survey the secondary areas for marine mammals, and may move the shock test to one of the other two sites;

(3) Independent marine mammal observers (MMOs) will visually monitor the Safety Range by air (2 MMOs), onboard the USS MESA VERDE (a minimum of 6 MMOs) and onboard the Marine Animal Recovery Team (MART) support vessel (a minimum of 2 MMOs) before each test and coordinate with the Lead Scientist and Shock Trial Officer to postpone detonation if any marine mammal is detected within the Safety Range of 3.5 nm (6.5 km);

(4) A detonation will not occur if an ESA-listed marine mammal is detected within the Safety Range, and subsequently cannot be detected. If a North Atlantic right whale or other ESA-listed marine mammal is seen, detonation will not occur until the animal is positively relocated outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other listed marine mammals are present;

(5) Detonation will not occur if the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), or the visibility is equal to or less than 5.6 km (3 nm), and/or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 305 m (1,000 ft);

(6) Detonation will not occur earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for pre- and post-detonation monitoring; and

(7) The area will be monitored by observers onboard the MART vessel and by aircraft observers for 48 hours after each detonation, and for 7 days following the last detonation, to find, document and track any injured or dead animals. The aerial survey will search for a minimum of 3 hrs/day; the MART observers will monitor during all daylight hours. If post-detonation monitoring shows that marine mammals were killed or injured as a result of the shock trial, or if any marine mammals are observed in the Safety Range immediately after a detonation, NMFS will be notified immediately and detonations will be halted until procedures for subsequent detonations can be reviewed by NMFS and the Navy and changed as necessary.

More detailed descriptions of the protocols for the shock trial's mitigation and monitoring can be found in Section 5 of the Navy's Final EIS/OEIS.

Reporting Requirements

Within 120 days of the completion of the USS MESA VERDE shock trial, the Navy will submit a final report to NMFS. This report will include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and an estimate of the number of marine mammals in the Safety Range at the time of the detonation based on post-test aerial monitoring and current density estimates; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Determinations

Based on the scientific analyses detailed in the Navy's LOA application and further supported by information and data contained in the Navy's Final EIS/OEIS for the USS MESA VERDE shock trial and summarized in the preamble to this final rule, NMFS has determined that the incidental taking of marine mammals resulting from conducting an FSST on the USS MESA VERDE in the waters offshore of Mayport, FL during the summer months would have a negligible impact on the affected marine mammal species or stocks. While detonation of up to four 4,536-kg (10,000-lb) charges may adversely affect some marine mammals, the latest abundance and seasonal distribution estimates support the finding that the lethal taking of a single bottlenose dolphin, the injury of one bottlenose dolphin and one Risso's dolphin, and the Level B behavioral harassment of 282 small whales and dolphins of 7 different genera will have a negligible impact on the affected species or stocks of marine mammals inhabiting the waters of the U.S. Atlantic Coast. Impacts will be mitigated by mandating a conservative safety range for pre-detonation marine mammal exclusion, incorporating aerial and shipboard monitoring efforts in the program both prior to, and after, detonation of explosives, and prohibiting detonations whenever marine mammals are either detected within the 3.5-nm (6.5-km) Safety Range (or may enter the Safety Range at the time of detonation), or if weather and sea conditions preclude adequate aerial surveillance. Implementation of required mitigation and monitoring measures will result in the least practicable adverse impact on marine mammal stocks. NMFS has also determined that the FSST operation will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses identified in MMPA section 101(a)(5)(A)(i) (16 U.S.C. 1371(a)(5)(A)(i)). Therefore, NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met.

National Environmental Policy Act (NEPA)

The Navy released its Draft EIS/OEIS for the USS MESA VERDE shock trial for public review on October 26, 2007 (72 FR 60846; 72 FR 61329, October 30, 2007) with the public review period ending on December 10, 2007. On May 30, 2008 (73 FR 3115), the Environmental Protection Agency (EPA) announced receipt of the Navy's Final EIS/OEIS on this action. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of both the Draft and Final EIS/OEIS. The Navy's Draft and Final EIS/OEISs are available for viewing or downloading at: *http://www.mesaverdeeis.com*.

In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in the Navy's Final EIS/OEIS and determined that the Navy's Final EIS/OEIS accurately and completely describes the Navy proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. NMFS has also concluded that the impacts on the human environment (particularly on marine mammals) evaluated by the Navy are substantially the same as the impacts of NMFS/NOAA's proposed action to issue these regulations and an authorization under section 101(a)(5)(A) of the MMPA to the Navy to take marine mammals, by harassment, incidental to conducting an FSST on the USS MESA VERDE in the waters off Mayport, FL. In addition, the NMFS/NOAA has evaluated the U.S. Navy's Final EIS/OEIS and found that it includes all required components for adoption by NOAA, including: (1) A discussion of the purpose and need for the action; (2) a summary of the EIS, including the issues to be resolved, and in the Final EIS/OEIS, the major conclusions and

areas of controversy including those raised by the public; (3) a listing of the alternatives to the proposed action; (4) a description of the affected environment; (5) a succinct description of the environmental impacts of the proposed action and alternatives, including cumulative impacts; and (6) a listing of agencies and persons consulted, and to whom copies of the EIS have been sent.

Based on this review and analysis, NMFS/NOAA has adopted the Navy's Final EIS/OEIS under the Council on Environmental Quality's Regulations for Implementing the National Environmental Policy Act (40 CFR 1506.3). As a result, NMFS has determined it is not necessary to issue an Environmental Assessment (EA), supplemental EA or a new EIS for the issuance of regulations and an LOA to the Navy for the taking of marine mammals incidental to this activity. NMFS (ROD is available on NMFS' Web site (see **ADDRESSES**).

ESA

On June 12, 2007, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for the USS MESA VERDE shock trial. NMFS concluded consultation with the Navy on this action on July 17, 2008. The conclusion of that consultation is NMFS' Biological Opinion that conducting an FSST of the USS MESA VERDE in the waters offshore of Mayport, FL during the summer of 2008 and the issuance by NMFS of an incidental take authorization under section 101(a)(5)(A) for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage, that this action would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. If implemented, this rule would affect only the U.S. Navy which, by definition, is not a small business. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effective date for this final rule under 5 U.S.C. 553(d)(3) as impracticable and contrary to the public interest. This rule governs NMFS' issuance of an LOA and sets forth the mitigation, monitoring and reporting requirements with which the U.S. Navy must comply in conducting the shock test of the USS MESA VERDE. The Navy has provided NMFS with information that a 30-day delay in effective date would eliminate any opportunity to conduct the FSST for two full years because of the short window available in 2008 to conduct the test and because the Navy can conduct LPD 17 class FSSTs on the East Coast only every other year. The Navy is required by 10 U.S.C. Section 2366 to conduct realistic life fire testing of new classes of ships and the FSST is a critical piece of this testing. Additionally the Navy conducts the FSST on a class of ships prior to overseas deployment, to ensure that the ship can survive damage sustained in a combat situation. As a result, the delay would negatively affect national security and military readiness by requiring the Navy to either alter the scheduled deployment of several ships, or send ships overseas without their normal validation of combat survivability. For these reasons, NMFS finds good cause to waive the 30-day delay in effective date. This rule is effective upon filing.

Changes From the Proposed Rule

Other than minor edits to the rule for clarification and consistency NMFS has made one change to the rule:

1. The common dolphin has been added to the marine mammal species authorized for incidental taking in 50 CFR 216.161(b).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 18, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart O is added to read as follows:

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD 19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

Sec.
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Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS MESA VERDE (LPD 19) by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.161 Specified activity and incidental take levels by species.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by persons engaged in the detonation of up to four 4,536 kg (10,000 lb) conventional explosive charges within the waters of the U.S. Atlantic Coast offshore Mayport, FL, for the purpose of conducting one full ship-shock trial (FSST) of the USS MESA VERDE (LPD 19) during the time period between July 23 and September 20, 2008, and May 1 and September 20, 2009 through 2013.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Minke whale (*Balaenoptera acutorostrata*), dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whale (*Globicephala macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); spinner dolphin (*S. longirostris*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); common dolphin (*Delphinus delphis*), false killer whale (*Pseudorca crassidens*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); and True's beaked whale (*M. mirus*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total, across all species, of no more than 1 mortality or serious injury, 2 takings by Level A

harassment (injuries), and 282 takings by Level B behavioral harassment (through temporary threshold shift). The incidental taking of any species listed as threatened or endangered under the Endangered Species Act is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective July 18, 2008 through July 18, 2013.

§ 216.163 Mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals in the course of the activity described in § 216.161(a) provided all requirements of these regulations and such Letter of Authorization are met.

(b) The activity identified in paragraph § 216.161(a) of this section must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be implemented:

(1) Except as provided under the following paragraph (2), if any marine mammals are visually detected within the designated 3.5 nm (6.5 km) Safety Range surrounding the USS MESA VERDE, detonation must be delayed until the marine mammals are positively resighted outside the Safety Range either due to the animal(s) swimming out of the Safety Range or due to the Safety Range moving beyond the mammal's last verified location.

(2) If a North Atlantic right whale or other marine mammal listed under the Endangered Species Act (ESA) is seen within the Safety Range, detonation must not occur until the animal is positively resighted outside the Safety Range and at least one additional aerial monitoring of the Safety Range shows that no other right whales or other ESA-listed marine mammals are present;

(3) If the sea state exceeds 3 on the Beaufort scale (i.e., whitecaps on 33 to 50 percent of surface; 2 ft (0.6 m) to 3 ft (0.9 m) waves), the visibility is equal to or less than 3 nm (5.6 km), or the aircraft ceiling (i.e., vertical visibility) is equal to or less than 1,000 ft (305 m), detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(4) A detonation must not be conducted earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for conducting the pre-detonation and post-detonation monitoring requirements in § 216.165;

(5) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred,

(i) the Director, Office of Protected Resources, National Marine Fisheries Service must be notified within 24 hours of the taking determination,

(ii) the FSST procedures and monitoring methods must be reviewed in coordination with the National Marine Fisheries Service, and

(iii) appropriate changes to avoid future injury or mortality must be made prior to conducting the next detonation.

§ 216.164 Prohibitions.

No person in connection with the activities described in § 216.161(a) shall:

(a) Take any marine mammal not specified in § 216.161(b);

(b) Take any marine mammal specified in § 216.161(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in § 216.161(b) if such taking results in more than a negligible impact on the species or stocks or marine mammals;

(d) Violate, or failure to comply with, the requirements of a Letter of Authorization issued under § 216.106.

§ 216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, or state or local agency with regulatory authority for monitoring the impacts of the activity on marine mammals. The holder must notify the Director, Office of Protected Resources, National Marine Fisheries Service at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate at least 6 experienced on-site marine mammal observers (MMOs) onboard the USS MESA VERDE, 2 experienced MMOs onboard the survey aircraft and 2 experienced MMOs onboard the Navy support vessel each of whom has been approved in advance by NMFS, to monitor the Safety Range for presence of marine mammals and to record the effects of explosives detonation on marine mammals that inhabit the Navy's Jacksonville/Charleston Operating Area offshore of Mayport, Florida.

(c)(1) Prior to each detonation for the FSST, an area will be located which has been determined by an aerial survey to contain the lowest marine mammal abundance relative to other areas within the area off Mayport, FL.

(2) The test area must be monitored by aerial and shipboard monitoring for the following periods of time:

(i) 48–72 hours prior to a scheduled detonation (aircraft only),

(ii) on the day of detonation,

(iii) immediately after each detonation and continuing for at least 3 hours subsequent to each detonation (or until sighting conditions become unsuitable for visual observations),

(iv) for at least 2 days after each detonation, unless weather and/or sea conditions preclude surveillance, in which case post-test survey dates must be extended, and

(v) for a period of 7 days after the last detonation for a minimum of 3 hours per day at the detonation site and down-current from the site.

(3) Monitoring shall include, but is not limited to, aerial and vessel surveillance sufficient to ensure that no marine mammals are within the designated Safety Range prior to or at the time of detonation.

(d) Under the direction of an attending U.S.-licensed veterinarian (an attending U.S. licensed veterinarian is one who has graduated from a veterinary school accredited by the American Veterinary Medical Association Council on Education, has a certificate by the American Veterinary Graduates Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education, as determined by the NMFS Assistant Administrator), an examination and recovery of any dead or injured marine mammals will be conducted in accordance with protocols and best practices of the NOAA Health and Stranding Response Program. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, including the retention of marine mammals, may be conducted without a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to Subpart D of this part.

(f) Subject to relevant Navy regulations, the National Marine Fisheries Service at its discretion may place an observer on any ship or aircraft involved in marine mammal monitoring either prior to, during, or after explosives detonation.

(g) A final report must be submitted to the Director, Office of Protected

Resources, no later than 120 days after completion of the USS MESA VERDE (LPD 19) shock trial. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A detailed description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammals.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and an estimate of the number, by species, of marine mammals in the Safety Range at the time of detonation based on post-test aerial monitoring and current density estimates.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.166 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 08–1461 Filed 7–18–08; 3:06 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.070430095–7095–01]

RIN 0648–XH85

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fishery; Inseason Action #1 and #2

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NOAA Fisheries announces two inseason actions in the ocean salmon fisheries. Inseason action #1 modified the commercial fishery from Cape Falcon, Oregon, to the Oregon/California Border, and from Horse Mountain, California, to Point Arena, California. Inseason action #2 modified the recreational fishery from Cape Falcon, Oregon, to Humbug Mountain, Oregon and from Horse Mountain, Oregon, to the U..S./Mexico Border.

DATES: Inseason action #1 was effective on March 15, 2008, in the area from Cape Falcon, Oregon, to the Oregon/California Border, effective April 7, 2008, in the area from Horse Mountain to Point Arena, CA. Inseason action #2 was effective March 15, 2008 in the area from Cape Falcon to Humbug Mountain, Oregon, effective on April 1, 2008, in the area from Horse Mountain to Point Arena, CA, and effective April 15, 2008, in the area from Point Arena, CA, to the U.S/Mexico Border. Comments will be accepted through August 8, 2008.

ADDRESSES: You may submit comments, identified by 0648–AV56, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736 Attn: Sarah McAvinchey
- Mail: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2007 annual management measures for ocean salmon fisheries (72 FR 24539, May 3, 2007), NMFS announced the commercial and recreational fisheries in the area from Cape Falcon, Oregon, to the U.S/Mexico Border.

On March 13, 2008, the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife and California Department of Fish and Game. Information related to catch to date, Chinook and coho catch rates, and possible impacts to Sacramento Fall Chinook were discussed. These inseason actions were taken because these fisheries were to occur in the impact area for Sacramento Fall Chinook. This stock was projected not to meet its escapement goal in 2008 and therefore consistent with the Magnuson-Stevens Act all fisheries that impact the stock were to be closed. By moving the opening dates of these fisheries NMFS and the Council would have more time to evaluate the impacts of these fisheries on the Sacramento River fall Chinook stock.

As a result, on March 13, 2008, the states recommended, and the RA concurred that inseason action #1 would move the opening date of the commercial fishery in the area from Cape Falcon, Oregon, to the Oregon/California Border, from March 15, 2008, to April 15, 2008. This action also closed the area from Horse Mountain, California, to Point Arena, California, effective April 7, 2008. Inseason action #2, modified recreational fishing in the area from Cape Falcon, Oregon, to Humbug Mountain, Oregon, by adjusting the opening date of the fishery from March 15, 2008, to April 15, 2008. Inseason action #2 also closed the area from Horse Mountain, California, to Point Arena, California, effective April 1; and closed the area from Point Arena, California, to the U.S./Mexico Border effective April 5, 2008. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(I).

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and

2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (72 FR 24539, May 3, 2007), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures. These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: July 18, 2008.

Emily H. Menashes,

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

[FR Doc. E8–16996 Filed 7–23–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02]

RIN 0648–AX02

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) August 1, 2008. Comments on this final rule must be received no later than 5 p.m., local time on August 25, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AX02 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail gretchen.arentzen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on: March 20, 2007 (71 FR 13043); April 18, 2007 (72 FR 19390); July 5, 2007 (72 FR 36617); August 3, 2007 (72 FR 43193); September 18, 2007 (72 FR 53165); October 4, 2007 (72 FR 56664); December 4, 2007 (72 FR 68097); December 18, 2007 (72 FR 71583); and April 18, 2008 (73 FR 21057).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its June 6–13, 2008, meeting in Foster City, California. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. This action is not expected to result in greater impacts to

overfished species than originally projected at the beginning of 2008. Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of depleted stocks by remaining within their rebuilding OYs.

Limited Entry Non-Whiting Trawl Fishery Management Measures

At its June 2008 meeting, the Council received new data and analyses on the catch of groundfish in the limited entry trawl fishery. The Council's recommendations for revising 2008 trawl fishery management measures provide additional harvest opportunities in some areas for target species with catches tracking behind projections, and lower trip limits to prevent exceeding the 2008 optimum yield (OY) for petrale sole.

Catches of several trawl target species have been tracking behind 2008 projections made at the Council's March 2008 meeting, or are projected to come in below the 2008 OYs if no adjustments to RCAs or cumulative limits are made. The Council considered the most recently available data from the Pacific Fishery Information Network (PacFIN) at their June 6–13, 2008 meeting. These data, dated May 30, 2008, indicated that: 571 mt of the 2,810 mt sablefish allocation in the limited entry trawl fishery had been taken; 4,776 mt of the 16,500 mt Dover sole OY had been taken; and 342 mt of the 4,884 mt other flatfish OY had been taken. North of 40°10.00′ N. lat., increases in trip limits were analyzed for some species for vessels using large footrope trawl gear because available data and anecdotal information from industry indicated that the distribution of some target species, particularly Dover sole, has been shifting from areas seaward of the RCA towards the shore, making them less available to trawlers seaward of the RCA. North of 40°10.00' N. lat., increases in trip limits were also analyzed for some species for vessels using selective flatfish trawl gear. The shoreward boundary of the RCA off Washington, southern Oregon, and northern California was shifted shoreward to a boundary line approximating the 60–fm (110–m) depth contour in April 2008 to reduce impacts on canary rockfish. This fathom restriction, while protecting canary rockfish, was also expected to restrict access to target species that occur between the boundary line approximating the 60–fm (110–m) depth contour and the boundary line approximating the 75–fm (137–m) depth contour, particularly for vessels that rely heavily on fishing in areas shoreward of the RCA in those areas. Increases for target species opportunities for vessels using selective flatfish trawl gear are limited by the need to keep canary rockfish impacts within the 2008 canary rockfish OY. A modest increase in trip limits for other flatfish, Dover sole, and sablefish, taken with selective flatfish trawl gear, can be accommodated when the shoreward boundary of the RCA is maintained at a line approximating the 60–fm (110–m) depth contour off Washington, southern Oregon, and northern California, and cumulative trip limits for petrale sole are simultaneously reduced. South of 40°10.00' N. lat., catches of some target species have also been tracking behind projections, however, as in the North, only modest increases in the sablefish limits were considered due to the potential effect on canary rockfish.

Many cumulative trip limits are established for two-month periods. A two-month limit can be raised in the middle of the period, but a two-month limit cannot be effectively lowered in the middle of a period because the fishers could take the prior, higher, trip limit before the inseason change could go into effect. Therefore, increases are becoming effective during the two-month cumulative limit, on August 1, and decreases will go into effect September 1, the start of a two-month period.

Based on these analyses above, the Council recommended and NMFS is implementing an increase in the limited entry trawl fishery cumulative limits coastwide: for sablefish taken with large footrope gear from ''19,000 lb (8,618 kg) per two months'' to ''24,000 lb (10,886 kg) per two months'' from August 1 through October 31; for sablefish taken with large footrope gear from ''14,000 lb (6,350 kg) per two months'' to ''19,000 lb (8,618 kg) per two months'' from November 1 through December 31. Based on these analyses above, the Council recommended and NMFS is implementing an increase in the limited entry trawl fishery cumulative limits north of 40°10.00' N. lat.: for sablefish taken with selective flatfish trawl gear from ''5,000 lb (2,268 kg) per two months'' to ''7,000 lb (3,175 kg) per two months'' from August 1 through December 31; for Dover sole taken with selective flatfish trawl gear from ''40,000 lb (18,144 kg) per two months'' to ''50,000 lb (22,680 kg) per two months'' from August 1 through December 31; and for other flatfish taken with selective flatfish trawl gear from ''50,000 lb (22,680 kg) per two months'' to ''80,000 lb (36,287 kg) per two months'' from August 1 through December 31.

Catches of petrale sole in the limited entry trawl fishery are tracking ahead of projections. Approximately 40 percent of the 2008 petrale sole OY was taken during the months of January and February, and most of this catch was taken north of 40°10.00' N. lat. If no action were taken, and petrale sole catch rates remain higher than previously expected throughout the year, total coastwide catch of petrale sole through the end of the year is projected to be 2,561 mt, exceeding the 2008 coastwide petrale sole OY of 2,499 mt by 62 mt. 2007–2008 management measures were designed to encourage targeting of petrale sole seaward of the RCA in winter months (January-February and November-December), and to allow nearshore opportunities the remainder of the year in the nearshore area using selective flatfish trawl gear. This is because petrale sole congregate in deeper waters in the winter, making it more efficient to target, and resulting in less bycatch than in non-winter months (March-October). In winter months the seaward boundary line of the RCA is modified to keep areas of known petrale abundance open for fishing and the petrale sole trip limits for large footrope trawl gear are highest in these months (''40,000 lb (18,144 kg) per two months''). For selective flatfish trawl gear, petrale sole limits are highest in non-winter months (''18,000 lb (8,165 kg) per two months''). Therefore, trip limit reductions to slow the catch of petrale sole using large footrope gear would be most effective during winter months, and trip limit reductions using selective flatfish trawl gear would be most effective in non-winter months. Therefore, to slow catch of petrale sole and stay below the 2008 petrale sole OY, the Council considered reducing petrale sole cumulative limits for vessels using large footrope trawl gear in November-December and for vessels using selective flatfish trawl gear in September-October.

Based on these analyses above, the Council recommended and NMFS is implementing a decrease in the limited entry trawl fishery cumulative limits for petrale sole north of 40°10.00' N. lat.: for large footrope trawl gear from ''40,000 lb (18,144 kg) per two months'' to ''30,000 lb (13,608 kg) per two months'' from November 1 through December 31; and for selective flatfish trawl gear from ''18,000 lb (8,165 kg) per two months'' to ''16,000 lb (7,258 kg) per two months'' from September 1 through October 31.

If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period. Therefore the trip limits for multiple trawl gear are modified for consistency with adjustments in trip limits for the above listed species and gears.

Limited Entry Fixed Gear Sablefish Daily Trip Limit Fishery

The Council considered an industry request to increase the limited entry fixed gear sablefish daily trip limit (DTL) fishery's daily trip limit north of 36° N. lat. The increase in the daily limit was requested to help industry members offset the increased cost of fuel on a per trip basis, without having a large increase in the overall sablefish catches, by leaving the weekly and bimonthly limits at 1,000 lb and 5,000 lb, respectively. The catch of sablefish in the limited entry DTL fishery north of 36° N. lat. has come in below the allocation over the last several years. This fishery caught 40 percent of their 2005 allocation, 38 percent of their 2006 allocation and 42 percent of their 2007 allocation. During that time catch limits have remained fairly constant and the Council's Groundfish Management Team (GMT) projected that, without any inseason adjustment, catches in the fishery would be below the limited entry fixed gear DTL allocation of sablefish. In the limited entry fishery, a change in the daily limit would have a far lesser effect on effort shifts than in the open access sablefish DTL fishery, due to the limited number of participants. Participation in the limited entry fixed gear sablefish DTL fishery is restricted because of the limited number of Federal limited entry fixed gear permits. No increases in the limited entry fixed gear sablefish DTL fishery south of 36° N. lat. were considered, as catches of sablefish in this area are very close to the projected catch at this time.

Based on the analyses above, the Council recommended and NMFS is implementing an increase in the daily limit in the limited entry fixed gear sablefish DTL fishery north of 36° N. lat.: from ''300 lb (136 kg) per day, or one landing per week of up to 1,000 lb (454 kg), not to exceed 5,000 lb (2,268 kg) per two months'' to ''500 lb (227 kg) per day, or one landing per week of up to 1,000 lb (454 kg), not to exceed 5,000 lb (2,268 kg) per two months'' from August 1 through December 31.

Open Access Sablefish Daily Trip Limit Fishery

The Council discussed reducing the sablefish daily trip limit (DTL) fishery's cumulative limit in the Conception area south of 36° N. lat. The most recently available data from the PacFIN, dated May 30, 2008, indicates that the catch of sablefish in this fishery from January through the end of April was higher than expected. The Council considered catches of sablefish in the open access fishery south of 36° N. lat. in the beginning of 2008 and compared them to the catches of sablefish in this fishery in recent years. In 2006, catches of sablefish from January to April totaled approximately 12,000 pounds. Late in the year, large effort shifts from the northern closed area and a poor salmon fishery forced reductions in the daily limit and an introduction of a 2 month cumulative limit of 3,000 lb (1,361 kg) per month in December 2006 in order to stay within the 2006 sablefish OY in this area (71 FR 69076, November 29, 2006). For 2007, trip limits were reduced from 2006 as a precautionary adjustment to keep sablefish within the 2007 OY. In 2007, catches of sablefish from January to April totaled approximately 33,000 pounds. In July 2007, catches were tracking below projections and the daily and weekly trip limits were moderately increased to allow access to the available sablefish. In 2008, catches of sablefish from January to April totaled approximately 64,000 pounds. The salmon fishery in 2008 is severely constrained off the coasts of Oregon and California, which is likely driving a large influx of fishing effort into the open access sablefish DTL fishery. Under the current daily and weekly limits of ''300 lb (136 kg) per day, or one landing per week of up to 700 lb (318 kg),'' a large increase in the number of open access sablefish DTL fishery participants could cause an early attainment of the open access sablefish allocation, and risk exceeding the 2008 sablefish OY if no mitigation measures are implemented. The Council's Groundfish Fishery Management Team (GMT) projected that if the higher than projected catch rate continues through the summer months the 2008 sablefish OY will be reached in October, forcing closure of sablefish fishing coastwide, as well as closure of other target species fishing opportunities where sablefish are caught, such as thornyheads and slope rockfish.

Only a minimal amount of hook-and-line or pot fishing gear is needed to participate in the sablefish DTL fishery, increasing the likelihood of fishers moving into this fishery. The 2008 salmon season is more restricted than it was in 2006. If the sablefish allocation were reached, the fishery would need to be closed, as it was in October 2006.

Though the open access sablefish DTL fishery could provide fishing opportunity for displaced salmon fishers, the necessary reductions in trip limits would likely have a large effect on fishers who have historically participated in the sablefish fishery. However, decreasing the sablefish catch rates on August 1 is predicted to result in a longer season, which would benefit fishers who have historically participated in the year-round fishery. It would also promote one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

At their June 6–13, 2008 meeting, the Council considered industry comments that further reductions in the daily limit would jeopardize the viability of the fishery, due to rising fuel costs, and the GMT analysis indicated that reductions in weekly limits would not affect overall sablefish catch. Therefore, the Council considered implementing a monthly or bi-monthly cumulative limit in the open access sablefish DTL fishery south of 36° N. lat. to reduce sablefish catches and keep the fishery within their 2008 sablefish allocation. Assuming that the current sablefish catch rate continues, the GMT estimated that implementing a bimonthly limit of 2,100 lb (953 kg) per two months would bring the projected catch of sablefish in this fishery back down to expected levels.

Implementation of, or reductions to, a bimonthly limit must occur at the start of a cumulative limit period, which corresponds to either July 1 or September 1, 2008. There was not sufficient time after the June 6–13 meeting to implement a bimonthly limit by July 1, therefore the Pacific Council also recommended implementing a monthly cumulative limit for the month of August to slow the sablefish catch in the open access sablefish as quickly as possible. The Pacific Council will continue to monitor catches in the open access sablefish DTL fishery as new data from the fishery are available.

Based on the analyses above, the Pacific Council recommended and NMFS is implementing the following cumulative limits in the open access DTL fishery for sablefish south of 36° N. lat.: from ''300 lb (136 kg) per day, or one landing per week of up to 700 lb (318 kg)'' to ''300 lb (136 kg) per day, or one landing per week of up to 700 lb (318 kg), not to exceed 1,000 lb (454 kg) per month'' from August 1 through

August 31; and from ''300 lb (136 kg) per day, or one landing per week of up to 700 lb (318 kg)'' to ''300 lb (136 kg) per day, or one landing per week of up to 700 lb (318 kg), not to exceed 2,100 lb (953 kg) per two months'', beginning September 1 through December 31.

Classification

These actions are taken under the authority of 50 CFR 660.370 (c) and are exempt from review under Executive Order 12866.

These actions are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see ADDRESSES) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to the 2008 groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also for the same reasons, NMFS finds good cause to waive part of the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective August 1, 2008.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its June 6–13, 2008, meeting in Foster City, California. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science by approaching without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect: limited entry commercial trawl and fixed gear fisheries off Washington, Oregon, and California and open access fisheries off California, south of 36° N. lat. These adjustments to management measures must be implemented in a timely manner, by August 1, 2008, to: allow fishermen an opportunity to harvest higher trip limits for stocks with catch tracking behind their projected 2008 catch levels; prevent exceeding the 2008 OYs for petrale sole and sablefish; and prevent premature closure of fisheries.

Changes to the cumulative limits in the limited entry trawl fishery are needed to relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks. Changes are also needed for petrale sole to reduce catches to keep harvest within the 2008 OY. Changes to trip limits in the limited entry trawl fishery for sablefish, Dover sole, and other flatfish are needed to relieve a restriction and to allow fisheries to approach, but not exceed, the 2008 OY for these species and must be implemented in a timely manner by August 1, 2008, so that fishermen are allowed increased opportunities to harvest available healthy stocks and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change by August 1 relieves a regulatory restriction for fisheries that are important to coastal communities. Changes to cumulative limits in the limited entry trawl fishery for petrale sole must be implemented in a timely manner by September 1, 2008, to prevent the 2008 petrale sole OY from being exceeded and prevent premature closure of fisheries that take petrale sole.

Changes to trip limits in the limited entry fixed gear sablefish DTL fishery are needed to relieve a restriction and to allow fisheries to approach, but not exceed, the 2008 sablefish OY and must be implemented in a timely manner by August 1, 2008, so that fishermen are allowed increased opportunities to harvest available healthy stocks and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. Failing to increase the daily limit for sablefish in a timely manner would result in unnecessary restriction of fisheries that are important to coastal communities and is therefore contrary to the public interest.

Implementation of monthly and bi-monthly cumulative limits in the open access sablefish DTL fishery are needed to prevent the 2008 sablefish OY from being exceeded and prevent premature closure of fisheries that take sablefish. These changes must be implemented in a timely manner by August 1, 2008. Failure to implement trip limit restrictions would risk premature closure of fisheries that are important to coastal communities, which would fail to meet the objectives of the Pacific Coast Groundfish FMP to allow for year round fishing opportunities to provide community stability.

These revisions are needed to keep the harvest of groundfish species within the harvest levels projected for 2008, while allowing fishermen access to healthy stocks. Without these measures in place, the fisheries could risk exceeding harvest levels, causing early and unanticipated fishery closures and economic harm to fishing communities. Delaying these changes would keep management measures in place that are not based on the best available data and that could lead to early closures of the fishery if harvest of groundfish exceeds levels projected for 2008. Such delay would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

List of Subjects in 50 CFR Part 660

Fishing, Fisheries, and Indian Fisheries.

Dated: July 18, 2008.

Emily H. Menashes,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Tables 3 (North), 3 (South), 4 (North), 4 (South), and 5 (South) to part 660 subpart G are revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 070108

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10.00' N. lat.	shore - modified 200 fm [7/]	shore - 200 fm	shore - 150 fm			shore - modified 200 fm [7/]
2	48°10.00' N. lat. - 46°38.17' N. lat.	75 fm - modified 200 fm [7/]	60 fm - 200 fm	60 fm - 150 fm			75 fm - modified 200 fm [7/]
3	46°38.17' N. lat. - 46°16.00 N. lat.		60 fm - 200 fm		60 fm - 150 fm		
4	46°16.00 N. lat. - 45°46.00' N. lat.		75 fm - 200 fm	75 fm - 150 fm		75 fm - 200 fm	
5	45°46.00' N. lat. - 43°20.83' N. lat.		75 fm - 200 fm				
6	43°20.83' N. lat. - 42°40.50' N. lat.	shore - modified 200 fm [7/]	shore - 200fm				shore - modified 200 fm [7/]
7	42°40.50' N. lat. -40°10.00' N. lat.	75 fm - modified 200 fm [7/]	75 fm - 200 fm	60 fm - 200 fm			75 fm - modified 200 fm [7/]

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

8	**Minor slope rockfish[2/] & Darkblotched rockfish**	1,500 lb/ 2 months					
9	**Pacific ocean perch**	1,500 lb/ 2 months					
10	**DTS complex**						
11	Sablefish						
12	large & small footrope gear	14,000 lb/ 2 months		19,000 lb/ 2 months	24,000 lb/ 2 months		19,000 lb/ 2 months
13	selective flatfish trawl gear	5,000 lb/ 2 months			7,000 lb/ 2months		
14	multiple bottom trawl gear [8/]	5,000 lb/ 2 months					
15	Longspine thornyhead						
16	large & small footrope gear	25,000 lb/ 2 months					
17	selective flatfish trawl gear	3,000 lb/ 2 months					
18	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
19	Shortspine thornyhead						
20	large & small footrope gear	12,000 lb/ 2 months		25,000 lb/ 2 months			
21	selective flatfish trawl gear	3,000 lb/ 2 months					
22	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
23	Dover sole						
24	large & small footrope gear	80,000 lb/ 2 months					
25	selective flatfish trawl gear	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months	50,000 lb/ 2 months		
26	multiple bottom trawl gear [8/]	40,000 lb/ 2 months	50,000 lb/ 2 months	40,000 lb/ 2 months			

TABLE 3 (North)

Table 3 (North). Continued

27	**Whiting**						
28	midwater trawl	Before the primary whiting season: CLOSED. – During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. – After the primary whiting season: CLOSED.					
29	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. – After the primary whiting season: 10,000 lb/trip.					
30	**Flatfish** (except Dover sole)						
31	Arrowtooth flounder						
32	large & small footrope gear	150,000 lb/ 2 months					
33	selective flatfish trawl gear	10,000 lb/ 2 months					
34	multiple bottom trawl gear [8/]	10,000 lb/ 2 months					
35	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
36	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole.			110,000 lb/ 2 months
37	large & small footrope gear for Petrale sole	40,000 lb/ 2 months					30,000 lb/ 2 months
38	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
39	selective flatfish trawl gear for Petrale sole						
40	multiple bottom trawl gear [8/]	70,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	50,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	80,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
41	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
42	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. – During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
43	large & small footrope gear	300 lb/ 2 months					
44	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
45	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

46	**Canary rockfish**			
47	large & small footrope gear	CLOSED		
48	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month
49	multiple bottom trawl gear [8/]	CLOSED		
50	**Yellowtail**			
51	midwater trawl	Before the primary whiting season: CLOSED. – During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. – After the primary whiting season: CLOSED.		
52	large & small footrope gear	300 lb/ 2 months		
53	selective flatfish trawl gear	2,000 lb/ 2 months		
54	multiple bottom trawl gear [8/]	300 lb/ 2 months		
55	**Minor nearshore rockfish & Black rockfish**			
56	large & small footrope gear	CLOSED		
57	selective flatfish trawl gear	300 lb/ month		
58	multiple bottom trawl gear [8/]	CLOSED		
59	**Lingcod**[4/]			
60	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months	
61	selective flatfish trawl gear		1,200 lb/2 months	
62	multiple bottom trawl gear [8/]			
63	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
64	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
65	**Other Fish** [5/]	Not limited		

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply – Read § 660.301 - § 660.399 before using this table

070108

TABLE 3 (South)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm - 150 fm [7/]					
	All trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months					
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
7	South of 38° N. lat.	40,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	14,000 lb/ 2 months		19,000 lb/ 2 months	24,000 lb/ 2 months		19,000 lb/ 2 months
10	Longspine thornyhead	25,000 lb/ 2 months					
11	Shortspine thornyhead	12,000 lb/ 2 months		25,000 lb/ 2 months			
12	Dover sole	80,000 lb/ 2 months					
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15	Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. – During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. – After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

Table 3 (South). Continued

20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**			
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month		
22	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED		
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month		
25	small footrope trawl for Chilipepper	2,000 lb/ 2 months		
26	**Bocaccio**			
27	large footrope or midwater trawl	300 lb/ 2 months		
28	small footrope trawl	CLOSED		
29	**Canary rockfish**			
30	large footrope or midwater trawl	CLOSED		
31	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month
32	**Cowcod**	CLOSED		
33	**Minor nearshore rockfish & Black rockfish**			
34	large footrope or midwater trawl	CLOSED		
35	small footrope trawl	300 lb/ month		
36	**Lingcod[4/]**			
37	large footrope or midwater trawl	1,200 lb/ 2 months	4,000 lb/ 2 months	
38	small footrope trawl		1,200 lb/ 2 months	
39	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
40	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
41	**Other Fish[5/] & Cabezon**	Not limited		

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ South of 34°27' N. lat., the RCA is 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 070108

TABLE 4 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm					
2	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
4	**Pacific ocean perch**	1,800 lb/ 2 months					
5	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		
6	**Longspine thornyhead**	10,000 lb/ 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months					
8	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
9	**Arrowtooth flounder**						
10	**Petrale sole**						
11	**English sole**						
12	**Starry flounder**						
13	**Other flatfish[1/]**						
14	**Whiting**	10,000 lb/ trip					
15	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
16	**Canary rockfish**	CLOSED					
17	**Yelloweye rockfish**	CLOSED					
18	**Minor nearshore rockfish & Black rockfish**						
19	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
20	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
21	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Other fish[5/]**	Not limited					

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length south of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 070108

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm - 150 fm					
2	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months			500 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months		
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bocaccio**						
29	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
30	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 4 (South)

Table 4 (South). Continued

TABLE 4 (South)

31	**Minor nearshore rockfish & Black rockfish**							
32	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
33	Deeper nearshore							
34	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months	
35	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
36	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months	
37	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
38	**Pacific cod**	1,000 lb/ 2 months						
39	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
40	**Other fish**[4/] **& Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 070108

TABLE 5 (South)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm - 150 fm					
2	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,200 lb/ 2 months			
9	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 700 lb			300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 1,000 lb/ 1 month	300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 2,100 lb/ 2 months	
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months			
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bocaccio**						
27	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
28	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

Table 5 (South). Continued

29	**Minor nearshore rockfish & Black rockfish**							
30	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
31	Deeper nearshore							
32	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months	
33	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
34	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months	
35	**Lingcod**[3/]	CLOSED		400 lb/ month				CLOSED
36	**Pacific cod**	1,000 lb/ 2 months						
37	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
38	**Other Fish**[4/] **& Cabezon**	Not limited						
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
41	40°10' - 38° N. lat.	100 fm - modified 200 fm [6/]	100 fm - 150 fm				100 fm - modified 200 fm [6/]	
42	38° - 34°27' N. lat.	100 fm - 150 fm						
43	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands						
44		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).						
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
46	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. E8–16986 Filed 7–23–08; 8:45 am]
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Proposed Rules

Federal Register
Vol. 73, No. 143
Thursday, July 24, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

RIN 3206–AK53

Implementation of the Freedom of Information Act

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to revise its regulations regarding implementation of the Freedom of Information Act (FOIA). The purpose of the revision is to make the regulations easier to understand and to update them with all changes to the FOIA since the last revision.

DATES: Comments must be received on or before September 22, 2008.

ADDRESSES: Send or deliver comments to Paul Carr, Freedom of Information/Privacy Act Officer, Center for Information Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5415, Washington, DC 20415; FAX (202) 418–3251; or e-mail to *foia@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Carr, (202) 606–4018.

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations to revise the rules implementing 5 U.S.C. 552, concerning the Freedom of Information Act (FOIA). The purpose of this revision to part 294 is to include both the 1996 E–FOIA and the 2007 OPEN Government Act amendments and to make part 294 easier to understand.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify these regulations will not have a significant economic impact on a substantial number of small entities because costs associated with requesting information under the Freedom of Information Act are not affected.

List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to revise 5 CFR part 294 to read as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
294.101 Purpose.
294.102 General definitions.
294.103 Definitions of categories and assignment of requests and requesters to categories.
294.104 Clarifying a requester's category.
294.105 Access to the requester's own records.
294.106 Publications, periodicals, and OPM issuances.
294.107 Places to obtain records.
294.108 Procedures for obtaining records.
294.109 Fees.
294.110 Appeals.
294.111 Custody of records; subpoenas.
294.112 Confidential commercial information.

Subpart B—The Public Information Function

294.201 Public information policy.

Subpart C—Office Operations

294.301 Policy and operations.

Subpart D—Cross References

294.401 References.

Authority: 5 U.S.C. 552, Freedom of Information Act (FOIA), Public Law 92–502, as amended by the Freedom of Information Reform Act of 1986, Public Law 99–570, E.O. 12600, 52 FR 23781 (June 25, 1987), Public Law 104–201, Public Law 104–231, E.O. 13392 (December 14, 2005), and Public Law 110–175.

Subpart A—Provisions for the Freedom of Information Act

§ 294.101 Purpose.

This subpart contains the regulations the Office of Personnel Management (OPM) follows in processing all requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, except when an individual requests their own records maintained in an OPM or government-wide systems of records. In this case, OPM will process the request under the Privacy Act, as provided by 5 CFR 294.105.

§ 294.102 General definitions.

(a) All of the terms defined in the Freedom of Information Act, and the definitions included in the ''Uniform Freedom of Information Act Fee Schedule and Guidelines'' issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

(b) Definitions, as used in this subpart:

Agency, as used in this part, refers to the U.S. Office of Personnel Management (OPM).

Component means each separate office, division, center, or group in OPM with responsibility for responding to FOIA requests.

Direct costs means the expenditures OPM actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request. Overhead expenses, such as the cost of space and heating or lighting the facility in which the records are stored, are not included in direct costs.

Disclose or disclosure means making records available, on request, for examination and copying or furnishing a copy of records.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Among the forms that such copies can take are paper, microform, audiovisual materials or machine readable documentation (*e.g.*, magnetic tape, disk or CD–ROM).

FOIA request means a written request (including letter, FAX or e-mail), citing the FOIA, for access to records of the executive branch of the Federal Government the requester believes are held by OPM.

Records, information, document and *material* mean the same as the term *agency records* in 5 U.S.C. 552(f).

Review means the process of initially examining documents located in response to a request to determine whether any documents or portion of any document located may be withheld from disclosure. *Review* also includes processing documents for disclosure; *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include the time spent resolving general legal and policy issues regarding the application of exemptions.

Search means the time spent looking for material that is responsive to a request, including page-by-page or line-by-line, manually or by automated means, identification of material within documents.

§ 294.103 Definitions of categories and assignment of requests and requesters to categories.

OPM will apply the definitions and procedures outlined in this section to assign requesters to categories. The requester categories, as established by 5 U.S.C. 552(a), are:

(a) *Commercial use request* means a FOIA request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a request properly belongs in this category, OPM will look first to the intended use of the documents being requested.

(b) *Educational institution request* means a FOIA request that is made as authorized by, and under the auspices of, a qualifying public or private educational institution; and the records are sought in furtherance of scholarly goal of the institution and not an individual goal. Educational institutions refers to public or private, preschools, elementary or secondary schools, institutions of undergraduate or graduate higher education, institutions of professional education or vocational education that operate a program or programs of scholarly or scientific research.

(c) *News media request* means a FOIA request from a representative of the news media which means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of *news*) who make their products available for purchase or subscription or by free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. *A freelance journalist* shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; OPM may also consider the past publication record of the requester in making such a determination.

(d) *Non-commercial scientific institution request* means a FOIA request from an institution not operated on a commercial basis and is operated solely to conduct scientific research that produces results that are not intended to promote any particular product or industry.

(e) *Other request* means a FOIA request not covered in paragraphs (a), (b), (c), or (d) of this section. However, as provided by § 294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

§ 294.104 Clarifying a requester's category.

(a) *Seeking clarification of a requester's category.* OPM may seek additional clarification from a requester before assigning his or her request to a specific category if:

(1) There is reasonable cause to doubt the requester's intended use of records; or

(2) The intended use is not clear from the request itself; or

(3) There is any other reasonable doubt about qualifications that may affect the fees applicable or the services rendered under § 294.109.

(b) *Prompt notification to requester.* When OPM seeks clarification as provided by paragraph (a) of this section, it will notify a requester promptly either by telephone or in writing of the information or materials needed.

(c) *Effect of seeking clarification on time limits for responding.* If OPM does not receive the requested information from the requester within 30 days, OPM will assign a final requester category to the request, calculate any fees, and apply the time limits under 5 U.S.C. 552 for responding to the FOIA request. OPM will not consider any request for records as received from the requester until it:

(1) Receives any additional clarification needed under paragraph (a) of this section; and

(2) Determines the clarifying information is sufficient to correctly place the requester in one of the request categories in 5 CFR 294.103.

§ 294.105 Access to the requester's own records.

(a) *Personnel, retirement or background investigation records.* Only the subject of a record, or his or her authorized representative, may request records about him or herself as defined by 5 U.S.C. 552a(a)(4) by writing to the addresses in 5 CFR 294.107. The record must be identifiable by the subject's name or other personal identifier. OPM will process the request under Privacy Act procedures in 5 CFR part 297.

(b) *Medical records.* OPM may disclose a subject's medical records to him or her, or to his or her authorized representative. Medical records may contain information about a subject's mental or physical condition a physician would hesitate to give to the subject. In these circumstances, OPM will disclose the records, including the exact nature and probable outcome of the subject's condition, only to a licensed physician designated in writing by the subject or his or her designated representative. OPM will process the request under the Privacy Act procedures in 5 CFR part 297.

§ 294.106 Publications, periodicals, and OPM issuances.

(a) OPM makes available in the agency's Electronic Reading Room or for public inspection and copying the following types of records unless a FOIA exemption applies:

(1) Records requested three or more times under FOIA;

(2) OPM administrative staff manuals and instructions that affect members of the public;

(3) Final opinions made by OPM in the adjudication of cases;

(4) OPM policy statements and interpretations adopted but not published in the **Federal Register**;

(5) Public agency documents created after October 31, 1996.

(b) OPM may delete identifying details when publishing an opinion, statement of policy, interpretation, manual or instruction to prevent a clearly unwarranted invasion of personal privacy.

(c) These materials are available during normal working hours. Review of the materials must be coordinated with OPM's FOIA/PA Officer.

(d) Electronic copies are available through OPM's Electronic FOIA Reading room at *http://www.opm.gov/efoia/*.

(e) Paper copies are also available by writing to: FOIA/PA Officer, U.S. Office of Personnel Management, Office of the Chief Information Officer, FOIA Requester Service Center, 1900 E Street, NW., Washington, DC 20415.

(f) If a request is for material published and offered for sale (*e.g.*, by

the Superintendent of Documents, Government Printing Office), OPM will explain where the material may be reviewed or purchased.

§ 294.107 Places to obtain records.

(a) Though OPM has a decentralized system for processing FOIA requests whereby each OPM component has responsibility for responding to FOIA requests for records they maintain, all requests for records except as shown in paragraphs (b), (c), (d), or (e) of this section should be sent to: FOIA/PA Officer, U.S. Office of Personnel Management, Office of the Chief Information Officer, FOIA Requester Service Center, 1900 E Street, NW., Washington, DC 20415. E-mail: *foia@opm.gov*. Fax: See the FAX number for this office on OPM's Web site at *http://www.opm.gov/efoia*.

(b) *Requesting copies of background investigations*. (1) The background investigations for most former civilian and military Federal employees, Federal contractors and applicants for Federal employment are stored at the address below. Requests *must* include the subject's hand-written signature and all of the information below. E-mail requests cannot be accepted.

(i) Full name.

(ii) Social Security Number.

(iii) Date of birth.

(iv) Place of birth.

(v) Current home address (a Post Office Box is not acceptable).

(vi) FAX: See the FAX number for this office on OPM's Web site at *http://www.opm.gov/efoia*.

(2) *Mail requests to:* FOI/P, OPM–FIPC, P.O. Box 618, 1137 Branchton Road, Boyers, PA 16018–0618.

(c) *Requesting personnel records for current Federal employees*. The Official Personnel Folders (OPFs) for current Federal employees are stored at the employee's current employing agency. The request for the records must be made directly to that agency's Freedom of Information/Privacy office. The Department of Justice (DOJ) provides the current list of agency Freedom of Information/Privacy contacts on its Web site at *http://www.usdoj.gov/oip/foiacontacts.htm*.

(d) *Requesting personnel records for non-Postal former Federal employees*. (1) The Official Personnel Folders (OPFs) for most former civilian and military Federal employees are stored at the address below. Requests *must* include the subject's hand-written signature and all of the information below. E-mail requests cannot be accepted.

(i) Social Security Number.

(ii) Date of birth.

(iii) Name of last agency where employed.

(iv) Approximate date when last employed with the Federal government.

(2) *Mail requests to:* National Personnel Records Center (NPRC), 111 Winnebago Street (*indicate Civilian or Military*), St. Louis, MO 63118–4126. Fax: (314) 801–9268.

(e) *Requesting personnel records for former Postal Federal employees*. (1) The Official Personnel Folders (OPFs) for former U.S. Postal Service (USPS) employees are stored at the U.S. Postal Service. Requests *must* include the subject's hand-written signature and all of the information below. E-mail requests cannot be accepted.

(i) Social Security Number.

(ii) Date of birth.

(iii) Name of last agency where employed.

(iv) Approximate date when last employed with the U.S. Postal Service.

(2) *Mail requests to:* U.S. Postal Service, General Manager, Headquarters Personnel Division, 475 L'Enfant Plaza, SW., Washington, DC 20260–4261.

(f) *When an organization does not have records in its custody*. When an OPM organization receives a Freedom of Information Act request for OPM records that it does not have in its possession, it will promptly forward the request to the appropriate organization. If a person has asked to be kept apprised of anything that will delay the official receipt of a request, OPM will provide notice of this forwarding action. Otherwise, OPM may, at its option, provide such notice.

(g) *Records from other Government agencies*. When a person seeks records that originated in another Government agency, OPM may refer the request to the other agency for response. Ordinarily, OPM will provide notice of this type of referral.

(h) *Creating records*. If a person seeks information from OPM in a format that does not currently exist, OPM will not ordinarily compile the information for the purpose of creating a record to respond to the request. OPM will advise the individual that it does not have records in the format sought. If other existing records would reasonably respond to the request or portions of it, OPM may provide these. If fees as provided in § 294.109 apply to any alternative records, OPM will advise the requester before providing the records.

§ 294.108 Procedures for obtaining records.

Any individual (U.S./foreign), partnership, corporation, association or government (except foreign governments seeking intelligence agency information) may file a FOIA request with OPM. All requests for OPM records should be sent to the OPM office listed in 5 CFR 294.107(a).

(a) *Delivering a request*. Requests for OPM records may be delivered to OPM during business hours on a regular business day in the following manner:

(1) By mail;

(2) In person;

(3) By faxing a request (FAX numbers are on the FOIA contacts list at *http://www.opm.gov/efoia/*); or

(4) By e-mailing a request to *foia@opm.gov*, EXCEPT for those Privacy requests shown in § 294.107 (b), (c), (d), and (e).

(b) *Marking the request*. Mark the request for records clearly and prominently with ''FOIA Request'' or ''Freedom of Information Act Request.'' If the request is sent by:

(1) Mail or in an envelope, mark the outside envelope and the letter;

(2) FAX, mark the top of the page; or

(3) E-mail, include the mark in the subject line.

(c) *Information to provide in the request*. The request, regardless of the format, must describe the records sought in sufficient detail to enable OPM staff to locate the records with a reasonable amount of effort. OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations. The more information the requester includes, the easier it will be for OPM to locate the record(s) he or she seeks. Each record request should include specific information, such as:

(1) Requester's name, full mailing address, telephone number and, if available, e-mail address;

(2) The approximate date the record was created;

(3) The Social Security Number, retirement claim number, publication number or any other number the requester believes will help OPM to identify the record;

(4) The title, name or subject matter of the record; and

(5) The author of any publication.

(d) *Restrictions on e-mail requests*. OPM cannot accept e-mail requests for the following types of records because written signature of either the requester or his or her authorized representative are required:

(1) Individual personnel records;

(2) Individual retirement records; or

(3) Individual background investigation records.

(e) *Medical records*. OPM or another Government agency may disclose the

medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual's mental or physical condition that a prudent physician would hesitate to give to the individual. Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to a licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(f) *Publications.* If the subject matter of a request includes material published and offered for sale (*e.g.*, by the Superintendent of Documents, Government Printing Office), OPM will explain where a person may review and/or purchase the publications.

(g) *Responsibility for responding to requests.* OPM has a decentralized system for processing FOIA requests whereby each OPM component has responsibility for responding to FOIA requests for records they maintain. Within 10 working days of receiving a request in OPM's FOIA Requester Service Center, or any OPM component, a request will be reviewed to:

(1) Determine if the request is for records OPM maintains and, if so, forward to the appropriate OPM component(s) which may have responsive records. The OPM component(s) will have 20 business days from receipt of the forwarded request to provide the records sought except as provided in paragraph (g)(2) of this section.

(2) Determine if the request reasonably describes the record(s) sought. If it does not, OPM will tell the requester why the request is insufficient and notify the requester of any additional information needed to process the request. OPM will also offer the requester an opportunity to prepare and reformulate the request so it meets the requirements of this section.

(3) Determine if another Federal agency may have the records and refer the request to that agency for action. The request will then be subject to that agency's FOIA regulations. If the requester or the requester's authorized representative asks to be notified of anything that will delay the official receipt of the requester's request, OPM will notify the requester in writing that his or her request has been forwarded to another agency for action.

(i) If a request is for records OPM does not have the authority to release without consulting another agency, copies of the request will be referred to the appropriate agency. Depending on the records sought, the appropriate agency may respond directly to the requester. Otherwise, the final response to a request can be made only when the agency to whom OPM referred the documents responds to OPM.

(ii) If a request is for records containing confidential commercial information, OPM will contact the submitter of the requested information.

(h) *Acknowledgements of requests.* On receipt of a request, an OPM component will ordinarily send an acknowledgement letter to the requester under 5 CFR 294.109 and provide an assigned request number for further reference; acknowledgement letters will confirm the requester's agreement to pay fees, if required. Information regarding the status of the request can be obtained by following the procedures on OPM's FOIA page at *http://www.opm.gov/efoia/*.

(i) *New Time Limits.* As required by amendments to section 552 of title 5 United States Code, effective December 31, 2008, the 20-day period shall commence on the date on which the request is first received by the appropriate component of OPM, but in any event not later than ten days after the request is first received by the OPM FOIA Requester Center.

(j) *Applying the time limits.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request to be received until it arrives in the OPM organization that has responsibility for the records sought.

(k) *Responses to requests.*—(1) *Grants of requests.* (i) Once OPM decides to release the requested records in whole or in part, the requester will be informed in writing. If the records will be released, OPM's response may include the records or where they may be reviewed. If the records will be released only in part or the request will be denied, OPM's response will explain the reasons for this decision, the exemption(s) that apply and the requester's right to appeal the decision. If there are applicable fees associated with processing a request, OPM will release the records when payment is received as explained in 5 CFR 294.109. Once applicable fees are paid, OPM will provide the requester with copies of records in the format requested if the records:

(A) Already exist in the requested format; or

(B) Are readily reproducible in the requested format.

(ii) If a requester requests information from OPM in a format that does not currently exist, OPM will not create a record to respond to the requester.

(2) *Denials of requests.* When OPM decides to withhold in part or to deny the release of records, OPM will notify the requester in writing. Reasons for denying a request are:

(i) Records do not exist or cannot be located;

(ii) Records are not readily reproducible in the form or format requested;

(iii) Records are not subject to release under one of the nine published exemptions; or

(iv) Records are the subject of a disputed fee matter, including a denial of a fee waiver. OPM's denial letter will be signed by the appropriate official and will include:

(A) The name and title or position of the person responsible for the denial;

(B) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied;

(C) An estimate of the volume of records withheld, in number of pages or other reasonable form of estimation. The estimate will include specific exemptions used where the deletions are shown on the records or if disclosure will harm an interest protected by an applicable exemption; and

(D) The requester's right to appeal OPM's denial under 5 CFR 294.110.

(l) *Expedited processing.* To request expedited processing of a FOIA request, the requester must submit a statement, certified to be true and correct to the best of his or her knowledge, explaining the basis for expedited processing. OPM will expedite a FOIA request or appeal for any of the following reasons:

(1) Imminent threat to an individual's life or physical safety;

(2) Imminent loss of a substantial due-process right;

(3) An urgent need to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information to the public; or

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the Government's integrity that affects public confidence. Ordinarily, OPM will respond to a request for expedited processing within 10 days of receipt of the request. If OPM grants a request for expedited processing, OPM will process the request as quickly as possible. If OPM denies a request for expedited processing and a requester decide to appeal the denial, OPM will expedite the review of the appeal.

§ 294.109 Fees.

(a) *Applicability of fees.* (1) OPM will provide, without charge, reasonable

quantities of material available for free distribution to the public.

(2) OPM may provide other material, subject to payment of fees intended to recoup the full allowable direct costs of providing services. Fees for these materials may be waived if the request meets the requirements specified in 5 CFR 294.109.

(3) If a request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly notify the requester of the estimated fees associated with processing the requester's FOIA request. OPM's notice will offer the requester an opportunity to confer with OPM staff to modify the request to meet the requester's needs at a lower cost. OPM will process the request when the requester or the requester's authorized representative come to an agreement with OPM about the payment of the required fee. If OPM does not receive a response from the requester within 30 days of the date of notification, either of the requester's agreement to pay the fees associated with processing the FOIA request, or a modification to the request lowering the estimated costs, OPM will close the request and no additional action will be taken.

(4) OPM will ordinarily respond to FOIA requests in a decentralized manner. OPM may, at times, refer a single request to two or more components to make separate responses directly to a requester. Each component may assess fees for a requester's request for the direct costs to prepare the response.

(5) If a requester authorizes fees for a document search as provided in paragraph (c), OPM may assess charges for employee time spent searching for documents and other direct costs of a search, even if a fails to locate records or if the located records are determined to be exempt from disclosure. OPM will conduct searches in the most efficient and least expensive manner to minimize the cost for both the requester and OPM, *e.g.*, personnel should not engage in line-by-line search when photocopying an entire document would be a less expensive and quicker way to comply with a request.

(6) OPM will charge the requester for services requested and performed, but not required, under the FOIA, such as formal certification of records as true copies, by using the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(7) If OPM is assessed fees from the National Archives and Records Administration (NARA) or other institutions for retrieving records to assist in preparing a response to a request, those fees may be passed on to the requester.

(b) *Rates used to compute fees*. OPM will charge the requester the following rates for a document search, duplication, and review as required by 5 U.S.C. 552(a)(4). The rates below should be used in conjunction with the fee components listed in paragraph (c) of this section:

Service	Rate
(1) Employee time	Salary rate plus 20% to cover benefits.
(2) Photocopies (up to 8½″ × 14″).	$0.25 per page.
(3) Computer time	Actual direct cost.
(4) Supplies and other materials.	Actual direct cost.
(5) Other costs not identified above.	Actual direct cost.

(c) *Assessing fees based on requester's category*. (1) OPM determines fees differently for each category of requester as defined in 5 CFR 294.103. Requests have three cost components for the purpose of assessing fees:

(i) The cost of document search;

(ii) The cost of review; and

(iii) The cost of duplication.

(2) OPM will apply the rates in paragraph (b) of this section to the cost components that apply to he requester's category as follows:

Requester's category	Search	Review	Duplication
(i) Commercial	Actual direct costs	Actual direct costs	Actual direct costs.
(ii) Non-commercial (educational or scientific institution) or news media.	No charge	No charge	Actual direct costs.[1]
(iii) All others	Actual direct costs.[2]	No charge	Actual direct costs.[1]

[1] First 100 pages of paper copies or reasonable equivalent are copied free.

[2] First 2 hours of manual search time are free. If requested records are maintained in a computerized data base, OPM will use the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for computer search time: The operator's hourly salary plus 20% will be added to the hourly cost of operating the central processing unit that contains the record information.

(d) *OPM failure to comply with FOIA time limits*. If OPM fails to comply with the FOIA's time limits, unless ''unusual'' or ''exceptional'' circumstances as defined by 5 U.S.C. 552 apply to the processing of the request, OPM will not assess search fees.

(e) *Agreement to pay fees*. If a requester makes a FOIA request, it shall be considered an agreement by the requester to pay all applicable fees charged under 5 CFR 294.109, unless the requester seeks a waiver of fees. When making a request, the requester may specify a willingness to pay a greater or lesser amount. The requester may find *OPM's Freedom of Information Act Reference Guide* helpful in making his or her request. It is available on OPM's Web site at *http://www.opm.gov/efoia/* and in paper form by writing to: FOIA/Privacy Act Officer, U.S. Office of Personnel Management, Office of the Chief Information Officer, FOIA Requester Service Center, 1900 E Street, NW., Washington, DC 20415.

(f) *Payment of fees*. Fees are payable by check or money order to the Office of Personnel Management (OPM).

(1) When the fee total is less than $25.00, OPM will usually waive the fee except as provided in 5 CFR 294.109.

(2) If a request may reasonably result in a fee assessment of more than $25.00, OPM will not release the records unless the requester agrees in advance to pay the anticipated charges.

(3) OPM may put requests together (aggregate) and charge fees accordingly when there is a reasonable belief a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests to avoid the assessment of fees.

(i) If multiple requests of this type occur within a 30 day period, OPM may notify the requester it is aggregating the requests together as one and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advance payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one requester.

(g) *Payment of fees in advance.* If OPM estimates or determines the fees are likely to exceed $250.00, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines a requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurance of full payment.

(2) When a requester or an organization a requester represents previously failed to pay assessed fees in a timely manner (*i.e.*, payment was not made within 30 days of the billing date), OPM will require full payment of all fees in advance.

(3) If a requester or the organization the requester represents has not paid previously assessed fees, OPM will not begin to process any new request for records until the full amount the requester or the organization has paid the full amount owed plus any applicable interest, and the requester or the organization makes a full advance payment for the new request.

(h) *Waiver or reduction of fees.* All requests for fee waivers or reductions must be made at the time of the initial FOIA request. All requests must include the grounds for requesting the reduction or elimination of fees. OPM will waive or reduce fees only if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and release of the material is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM will consider the following factors:

(i) Subject of request: Whether the subject of the requested records concerns ''the operations or activities of the Government'';

(ii) The information value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding'' of the subject;

(iv) The significance of the contribution of public understanding: Whether disclosure of the requested information is likely to contribute ''significantly'' to public understanding of Government operations or activities;

(2) A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. A requester's status as ''profit making'' or ''non-profit making'' is not the deciding factor. Not only profit-making entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved. In determining whether disclosure is or is not primarily in the commercial interest of the requester, OPM will consider the following factors:

(i) *Existence and magnitude of a commercial interest.* Whether disclosure of the requested information will further the requesters commercial interest; and, if so,

(ii) *Primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure with public interest in disclosure is ''primarily in the commercial interest of the requester.''

(3) In all cases, the burden of proof is on the requester to present evidence or information in support of a request for a fee waiver or reduction.

(i) *Denial of fee waiver and reduction requests.*

(1) An OPM official may deny a request for a full or partial waiver of fees without further consideration if a request does not include:

(i) A clear statement of requester's interest in the requested information;

(ii) A clear statement of requester's proposed use for the information and whether the requester will derive an income or other benefit from this use;

(iii) A clear statement of how the public will benefit from OPM's release of the requested information; and

(iv) A clear statement of requester's qualifications, if a specialized use is planned.

(2) A requester may appeal the denial of a waiver request as provided by 5 CFR 294.110 of this part.

(j) *Fees not paid; penalties; debt collection.*

(1) OPM will promptly notify a requester if an advance payment, as provided under this section, is required before further processing of a request can begin. Payment of all fees is required within 30 days. OPM will not continue processing a request until payment is received.

(2) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be charged at the rate allowed in 31 U.S.C. 3717, and will accrue from the billing date.

(3) OPM may use the procedures authorized by Public Law 97–365, the Debt Collection Act of 1982, to encourage the repayment of debts incurred under this section. These procedures may include deciding to disclose information to consumer reporting agencies and to use collection agencies.

§ 294.110 Appeals.

(a) When an OPM official denies records or waivers of fees under the Freedom of Information Act, the requester may appeal to: Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. If the Office of the General Counsel denied the FOIA request, a requester may appeal the denial to the: Deputy Director, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(b) An appeal must be received in writing within 60 calendar days from the date of OPM's letter denying a request. The appellant should mark the letter and envelope with the words ''FOIA Appeal'' and include a copy of his or her initial request and the letter of denial. Additionally, the appellant should explain why OPM should release the requested records, grant a fee waiver request, or expedite the processing of his or her request. If OPM was not able to find the records the requester wanted, the appellant should explain why he or she believes the search was inadequate. If OPM denied a requester access to records and told him or her that the records were not subject to FOIA, the appellant should explain why he or she believes the records are subject to FOIA.

(c) The appeals provided for in this section constitute the final available levels of administrative review. If OPM affirms a denial of information or a denial of a fee waiver, a requester may seek judicial review in the district court of the United States District in the district where he or she resides, or has his or her principal place of business, or in which the agency records are located; or in the District of Columbia.

(d) If an official of another agency denies a FOIA request for records in one of OPM's government-wide systems of records, the requester should consult that agency's regulations for any appeal rights which may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

§ 294.111 Custody of records; subpoenas.

(a) The Center for Information Services, OPM, has official custody of

OPM records. A subpoena or other judicial order for an official record from OPM must be signed by a judge and should be served on the: FOIA/PA Office, U.S. Office of Personnel Management, Office of the Chief Information Officer, FOIA Requester Service Center, 1900 E Street, NW., Washington, DC 20415.

(b) See 5 CFR part 297 for the steps other officials should take on receipt of a subpoena or other judicial order for an OPM record.

§ 294.112 Confidential commercial information.

(a) In general, OPM will not disclose confidential commercial information in response to a FOIA request except in accordance with this section.

(b) The following definitions from Executive Order 12600 apply to this section:

(1) *Confidential commercial information* means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, State governments and foreign governments.

(c) *Designation of confidential commercial information*. Submitters of confidential commercial information must show by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions they consider to be confidential information and protected from disclosure under Exemption 4.

(d) *Notice to submitters*. OPM will, to the extent permitted by law, provide prompt written notice to an information submitter of FOIA requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information; or

(2) OPM has reason to believe the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section will either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, OPM will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section will not apply if:

(1) OPM determines the information should not be disclosed;

(2) The information has been lawfully published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after August 20, 1992, and has not been designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous. In such a case, OPM will, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section will give a submitter a reasonable period from the date of the notice to provide OPM with a detailed written statement of any objection to disclosure. The statement must specify all the reasons for withholding any of the material under any exemption of the FOIA. When Exemption 4 of the FOIA is cited as the reason for withholding information, the specification will demonstrate the basis for any contention that the material is a trade secret, commercial or financial information that is privileged or confidential. The statement must also include a specification of any claim of competitive harm, including the degree of such harm, that will result from disclosure. The information provided in response to this paragraph may also be subject to disclosure under the FOIA. Information provided in response to this paragraph will also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner, will be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object will not apply to notices of administrative appeals when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM will carefully consider a submitter's objections and specific grounds for nondisclosure, when it is received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM will send the submitter a written notice that will include:

(1) A statement of the reasons the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specific disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specific disclosure date.

(k) If a requester brings suit seeking to compel disclosure of confidential commercial information, OPM will promptly notify the submitter.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) OPM's public information policy is to release information about the functions and programs administered by OPM through news releases, publications, the world wide web or other methods.

(b) The Director, Office of Communications and Public Liaison, carries out OPM's public information policy. In addition, each OPM employee will cooperate in carrying out this policy.

Subpart C—Office Operations

§ 294.301 Policy and operations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the **Federal Register** are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.

Subpart D—Cross References

§ 294.401 References.

The table below provides assistance in locating other OPM regulations in title 5 of the Code of Federal Regulations with provisions on the disclosure of records:

Type of information	Location (CFR part No.)
Classification appeal records	511
Classification information	175
Employee performance folders	293
Examination and related subjects records	300
Grade and pay retention records	536
Investigative records	736
Job grading reviews and appeals records	532
Medical information	297 & 293
Official Personnel Folders	293
Privacy and personnel records	297
Retirement	831 & 841

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000 and 1033

[Docket No. AO–166–A77; DA–08–06]

Milk in the Mideast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider and take evidence on a proposal to temporarily adjust certain Class I differentials in the Mideast milk marketing order.

DATES: The hearing will convene at 9 a.m., on Tuesday, August 19, 2008.

ADDRESSES: The hearing will be held at the Westin Cincinnati Hotel—21 E 5th Street, Cincinnati, Ohio 45202, phone (513) 621–7700.

FOR FURTHER INFORMATION CONTACT: Erin C. Taylor, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231—Room 2963, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail-address: *erin.taylor@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail: *phuber@fmmaclev.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Westin Cincinnati Hotel, Cincinnati, Ohio, beginning at 9 a.m. on Tuesday, August 19, 2008, with respect to a proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Land O'Lakes, Inc., Michigan Milk Producers Association, Inc., Foremost Farms USA Cooperative, Inc., Dairylea Cooperative Inc., National Farmers Organization Inc., and Dairy Farmers of America, Inc. have jointly submitted a proposal that seeks to temporarily increase the Class I differentials in the southern tier of the Mideast milk marketing order. In addition to this proposed amendment to the order, AMS proposes to make any such changes as may be necessary to the order and its administrative rules and regulations to conform to any amendment that may result from the hearing.

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

The proposed amendments, as set forth below, have not received the approval of the Department.

List of Subjects in 7 CFR Parts 1000 and 1033

Milk marketing orders.

The authority citations for 7 CFR parts 1000 and 1033 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Proposed by Land O'Lakes, Inc., Michigan Milk Producers Association, Inc., Foremost Farms USA Cooperative, Inc., Dairylea Cooperative Inc., National Farmers Organization Inc., and Dairy Farmers of America, Inc.

Proposal 1

This proposal would temporarily adjust the Class I pricing surface for the southern counties within the geographical marketing area of the Mideast milk marketing order. Specifically, this proposal, on a temporary basis, would modify section 1000.51 of the general provisions of Federal milk orders by including a ''Class I price adjustment,'' which would be added to the Class I price ''mover,'' and to the section 1000.52 Class I differential, to obtain the minimum Order Class I price. The proposed changes to the Class I prices for plant locations in the Mideast milk marketing area would range from an increase of $0.15 per cwt to an increase of $0.40 per cwt.

1. Amend § 1000.50 by revising paragraphs (b) and (c), to read as follows:

§ 1000.50 Class prices, component prices and advanced pricing factors.

* * * * *

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the adjustment to Class I prices specified in § 1005.51(b), § 1006.51(b), § 1007.51(b) and § 1033.51(b) plus the higher of the advanced pricing factors computed in paragraphs (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustments to Class I prices specified in § 1005.51(b), § 1006.51(b), § 1007.51(b) and § 1033.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

2. Revise § 1033.51 to read as follows:

§ 1033.51 Class I differential, adjustments to class I prices and class I price.

(a) The Class I differential shall be the differential established for Cuyahoga County, Ohio, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1033.50 (a) for Cuyahoga County, Ohio.

(b) Adjustments to Class I prices. Class I prices shall be established pursuant to § 1000.50 (a), (b), and (c) using the following adjustments:

State	County/parrish	FIPS	Class I adjustment
IN	ADAMS	18001	0.00
IN	ALLEN	18003	0.00
IN	BARTHOLOMEW	18005	0.20
IN	BENTON	18007	0.00
IN	BLACKFORD	18009	0.00
IN	BOONE	18011	0.15
IN	BROWN	18013	0.20
IN	CARROLL	18015	0.00
IN	CASS	18017	0.00
IN	CLAY	18021	0.15
IN	CLINTON	18023	0.00
IN	DE KALB	18033	0.00
IN	DEARBORN	18029	0.20
IN	DECATUR	18031	0.20
IN	DELAWARE	18035	0.15
IN	ELKHART	18039	0.00
IN	FAYETTE	18041	0.15
IN	FOUNTAIN	18045	0.00
IN	FRANKLIN	18047	0.15
IN	FULTON	18049	0.00
IN	GRANT	18053	0.00
IN	HAMILTON	18057	0.15
IN	HANCOCK	18059	0.15
IN	HENDRICKS	18063	0.15
IN	HENRY	18065	0.15
IN	HOWARD	18067	0.00
IN	HUNTINGTON	18069	0.00
IN	JACKSON	18071	0.20
IN	JASPER	18073	0.00
IN	JAY	18075	0.00
IN	JEFFERSON	18077	0.20
IN	JENNINGS	18079	0.20
IN	JOHNSON	18081	0.15
IN	KOSCIUSKO	18085	0.00
IN	LA PORTE	18091	0.00
IN	LAGRANGE	18087	0.00
IN	LAKE	18089	0.00
IN	LAWRENCE	18093	0.20
IN	MADISON	18095	0.15
IN	MARION	18097	0.15
IN	MARSHALL	18099	0.00

State	County/parrish	FIPS	Class I adjustment
IN	MIAMI	18103	0.00
IN	MONROE	18105	0.20
IN	MONTGOMERY	18107	0.15
IN	MORGAN	18109	0.15
IN	NEWTON	18111	0.00
IN	NOBLE	18113	0.00
IN	OHIO	18115	0.20
IN	OWEN	18119	0.15
IN	PARKE	18121	0.15
IN	PORTER	18127	0.00
IN	PULASKI	18131	0.00
IN	PUTNAM	18133	0.15
IN	RANDOLPH	18135	0.15
IN	RIPLEY	18137	0.20
IN	RUSH	18139	0.15
IN	SHELBY	18145	0.15
IN	ST. JOSEPH	18141	0.00
IN	STARKE	18149	0.00
IN	STEUBEN	18151	0.00
IN	SULLIVAN	18153	0.00
IN	SWITZERLAND	18155	0.20
IN	TIPPECANOE	18157	0.00
IN	TIPTON	18159	0.00
IN	UNION	18161	0.15
IN	VERMILLION	18165	0.15
IN	VIGO	18167	0.15
IN	WABASH	18169	0.00
IN	WARREN	18171	0.00
IN	WAYNE	18177	0.15
IN	WELLS	18179	0.00
IN	WHITE	18181	0.00
IN	WHITLEY	18183	0.00
KY	BOONE	21015	0.20
KY	BOYD	21019	0.20
KY	BRACKEN	21023	0.20
KY	CAMPBELL	21037	0.20
KY	FLOYD	21071	0.40
KY	GRANT	21081	0.20
KY	GREENUP	21089	0.20
KY	HARRISON	21097	0.20
KY	JOHNSON	21115	0.40
KY	KENTON	21117	0.20
KY	LAWRENCE	21127	0.20
KY	LEWIS	21135	0.20
KY	MAGOFFIN	21153	0.40
KY	MARION	21155	0.00
KY	MARSHALL	21157	0.00
KY	MARTIN	21159	0.40
KY	MASON	21161	0.20
KY	PENDLETON	21191	0.20
KY	PIKE	21195	0.20
KY	ROBERTSON	21201	0.20
MI	ALCONA	26001	0.00
MI	ALGER	26003	0.00
MI	ALLEGAN	26005	0.00
MI	ALPENA	26007	0.00
MI	ANTRIM	26009	0.00
MI	ARENAC	26011	0.00
MI	BARAGA	26013	0.00
MI	BARRY	26015	0.00
MI	BAY	26017	0.00
MI	BENZIE	26019	0.00
MI	BERRIEN	26021	0.00
MI	BRANCH	26023	0.00
MI	CALHOUN	26025	0.00
MI	CASS	26027	0.00
MI	CHARLEVOIX	26029	0.00
MI	CHEBOYGAN	26031	0.00
MI	CHIPPEWA	26033	0.00
MI	CLARE	26035	0.00
MI	CLINTON	26037	0.00
MI	CRAWFORD	26039	0.00
MI	EATON	26045	0.00

State	County/parrish	FIPS	Class I adjustment
MI	EMMET	26047	0.00
MI	GENESEE	26049	0.00
MI	GLADWIN	26051	0.00
MI	GRAND TRAVERSE	26055	0.00
MI	GRATIOT	26057	0.00
MI	HILLSDALE	26059	0.00
MI	HOUGHTON	26061	0.00
MI	HURON	26063	0.00
MI	INGHAM	26065	0.00
MI	IONIA	26067	0.00
MI	IOSCO	26069	0.00
MI	IRON	26071	0.00
MI	ISABELLA	26073	0.00
MI	JACKSON	26075	0.00
MI	KALAMAZOO	26077	0.00
MI	KALKASKA	26079	0.00
MI	KENT	26081	0.00
MI	KEWEENAW	26083	0.00
MI	LAKE	26085	0.00
MI	LAPEER	26087	0.00
MI	LEELANAU	26089	0.00
MI	LENAWEE	26091	0.00
MI	LIVINGSTON	26093	0.00
MI	LUCE	26095	0.00
MI	MACKINAC	26097	0.00
MI	MACOMB	26099	0.00
MI	MANISTEE	26101	0.00
MI	MARQUETTE	26103	0.00
MI	MASON	26105	0.00
MI	MECOSTA	26107	0.00
MI	MIDLAND	26111	0.00
MI	MISSAUKEE	26113	0.00
MI	MONROE	26115	0.00
MI	MONTCALM	26117	0.00
MI	MONTMORENCY	26119	0.00
MI	MUSKEGON	26121	0.00
MI	NEWAYGO	26123	0.00
MI	OAKLAND	26125	0.00
MI	OCEANA	26127	0.00
MI	OGEMAW	26129	0.00
MI	OSCEOLA	26133	0.00
MI	OSCODA	26135	0.00
MI	OTSEGO	26137	0.00
MI	OTTAWA	26139	0.00
MI	PRESQUE ISLE	26141	0.00
MI	ROSCOMMON	26143	0.00
MI	SAGINAW	26145	0.00
MI	SANILAC	26151	0.00
MI	SCHOOLCRAFT	26153	0.00
MI	SHIAWASSEE	26155	0.00
MI	ST. CLAIR	26147	0.00
MI	ST. JOSEPH	26149	0.00
MI	TUSCOLA	26157	0.00
MI	VAN BUREN	26159	0.00
MI	WASHTENAW	26161	0.00
MI	WAYNE	26163	0.00
MI	WEXFORD	26165	0.00
OH	ADAMS	39001	0.20
OH	ALLEN	39003	0.00
OH	ASHLAND	39005	0.00
OH	ASHTABULA	39007	0.00
OH	ATHENS	39009	0.15
OH	AUGLAIZE	39011	0.00
OH	BELMONT	39013	0.00
OH	BROWN	39015	0.20
OH	BUTLER	39017	0.15
OH	CARROLL	39019	0.00
OH	CHAMPAIGN	39021	0.00
OH	CLARK	39023	0.15
OH	CLERMONT	39025	0.20
OH	CLINTON	39027	0.15
OH	COLUMBIANA	39029	0.00
OH	COSHOCTON	39031	0.00

State	County/parrish	FIPS	Class I adjustment
OH	CRAWFORD	39033	0.00
OH	CUYAHOGA	39035	0.00
OH	DARKE	39037	0.15
OH	DEFIANCE	39039	0.00
OH	DELAWARE	39041	0.00
OH	FAIRFIELD	39045	0.15
OH	FAYETTE	39047	0.15
OH	FRANKLIN	39049	0.15
OH	FULTON	39051	0.00
OH	GALLIA	39053	0.20
OH	GEAUGA	39055	0.00
OH	GREENE	39057	0.15
OH	GUERNSEY	39059	0.15
OH	HAMILTON	39061	0.20
OH	HANCOCK	39063	0.00
OH	HARDIN	39065	0.00
OH	HARRISON	39067	0.00
OH	HENRY	39069	0.00
OH	HIGHLAND	39071	0.20
OH	HOCKING	39073	0.15
OH	HOLMES	39075	0.00
OH	JACKSON	39079	0.20
OH	JEFFERSON	39081	0.00
OH	KNOX	39083	0.00
OH	LAKE	39085	0.00
OH	LAWRENCE	39087	0.20
OH	LICKING	39089	0.15
OH	LOGAN	39091	0.00
OH	LORAIN	39093	0.00
OH	LUCAS	39095	0.00
OH	MADISON	39097	0.15
OH	MAHONING	39099	0.00
OH	MARION	39101	0.00
OH	MEDINA	39103	0.00
OH	MEIGS	39105	0.15
OH	MERCER	39107	0.00
OH	MIAMI	39109	0.15
OH	MONROE	39111	0.15
OH	MONTGOMERY	39113	0.15
OH	MORGAN	39115	0.15
OH	MORROW	39117	0.00
OH	MUSKINGUM	39119	0.15
OH	NOBLE	39121	0.15
OH	PAULDING	39125	0.00
OH	PERRY	39127	0.15
OH	PICKAWAY	39129	0.15
OH	PIKE	39131	0.20
OH	PORTAGE	39133	0.00
OH	PREBLE	39135	0.15
OH	PUTNAM	39137	0.00
OH	RICHLAND	39139	0.00
OH	ROSS	39141	0.15
OH	SANDUSKY	39143	0.00
OH	SCIOTO	39145	0.20
OH	SENECA	39147	0.00
OH	SHELBY	39149	0.00
OH	STARK	39151	0.00
OH	SUMMIT	39153	0.00
OH	TRUMBULL	39155	0.00
OH	TUSCARAWAS	39157	0.00
OH	UNION	39159	0.00
OH	VAN WERT	39161	0.00
OH	VINTON	39163	0.15
OH	WARREN	39165	0.15
OH	WASHINGTON	39167	0.15
OH	WAYNE	39169	0.00
OH	WILLIAMS	39171	0.00
OH	WOOD	39173	0.00
OH	WYANDOT	39175	0.00
PA	ALLEGHENY	42003	0.00
PA	ARMSTRONG	42005	0.00
PA	BEAVER	42007	0.00
PA	BUTLER	42019	0.00

State	County/parrish	FIPS	Class I adjustment
PA	CLARION	42031	0.00
PA	CRAWFORD	42039	0.00
PA	ERIE	42049	0.00
PA	FAYETTE	42051	0.00
PA	GREENE	42059	0.00
PA	LAWRENCE	42073	0.00
PA	MERCER	42085	0.00
PA	VENANGO	42121	0.00
PA	WASHINGTON	42125	0.00
PA	WESTMORELAND	42129	0.00
WV	BARBOUR	54001	0.00
WV	BOONE	54005	0.40
WV	BROOKE	54009	0.00
WV	CABELL	54011	0.20
WV	CALHOUN	54013	0.20
WV	DODDRIDGE	54017	0.00
WV	FAYETTE	54019	0.40
WV	GILMER	54021	0.20
WV	HANCOCK	54029	0.00
WV	HARRISON	54033	0.00
WV	JACKSON	54035	0.20
WV	KANAWHA	54039	0.40
WV	LEWIS	54041	0.00
WV	LINCOLN	54043	0.40
WV	LOGAN	54045	0.40
WV	MARION	54049	0.00
WV	MARSHALL	54051	0.00
WV	MASON	54053	0.20
WV	MINGO	54059	0.40
WV	MONONGALIA	54061	0.00
WV	OHIO	54069	0.00
WV	PLEASANTS	54073	0.20
WV	PRESTON	54077	0.00
WV	PUTNAM	54079	0.20
WV	RALEIGH	54081	0.40
WV	RANDOLPH	54083	0.00
WV	RITCHIE	54085	0.20
WV	ROANE	54087	0.20
WV	TAYLOR	54091	0.00
WV	TUCKER	54093	0.00
WV	TYLER	54095	0.00
WV	UPSHUR	54097	0.00
WV	WAYNE	54099	0.20
WV	WETZEL	54103	0.00
WV	WIRT	54105	0.20
WV	WOOD	54107	0.20
WV	WYOMING	54109	0.40

Proposed by Dairy Programs, Agricultural Marketing Service.

Proposal No. 2

For all Federal Milk Marketing Orders, make necessary changes to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the Mideast marketing area, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.

Office of the General Counsel.

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: July 21, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–16955 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. #AMS–CN–08–0040; CN–08–002]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2008 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by increasing the value assigned to imported cotton for calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton. In addition, AMS proposes to remove Harmonized Tariff Schedule (HTS) numbers that were absorbed into other HTS categories since the last assessment adjustment.

DATES: Comments must be received on or before September 22, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639-S, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through *www.regulations.gov*. All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639–S, Washington, DC 20250–0224 during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639–S, Washington, DC 20250–0224, telephone (202) 720–6603, facsimile (202) 690–1718, or e-mail at *Shethir.Riva@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended, the Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991 (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991 (56 FR 65450). Implementing rules were published on July 1 and 2, 1992 (57 FR 29181) and (57 FR 29431), respectively.

The last time AMS proposed to amend the Cotton Board Rules and Regulations, specifically to adjust the total rate of assessment per kilogram of imported cotton collected under the Cotton Research and Promotion Program, was on January 12, 2005 (70 FR 2034). This proposed rule resulted from years of consultation with the industry. In the proposed rule, the total rate of assessment would have been calculated by adding together the $1 per bale equivalent assessment and the supplemental assessment, and adjusting the sum to account for the estimated amount of U.S. cotton contained in the imported textile products by the estimated average amount of U.S. cotton contained therein. On November 20, 2006, however, AMS withdrew the proposed rule (71 FR 67072) based on a stakeholder comment questioning the data and the calculation of the proposed importer supplemental assessment. After receiving the comment and other available information, the agency did not believe that the proposed rule would achieve its intended objectives of effectiveness and efficiency. While AMS continues to evaluate this issue and garner additional stakeholders' input and economic data, AMS is proposing to amend the Cotton Board Rules and Regulations to adjust the importer supplemental assessment to be the same as that levied on domestic cotton producers. This proposed rule would increase the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). The total value is determined by a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton, which is equivalent to 500 pounds, or $1 per 226.8 kilograms of cotton. The second value is used to calculate the supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The supplement assessment is combined with the per bale equivalent to determine the total value and assessment of the imported cotton or cotton-containing products.

The Cotton Research and Promotion Rules and Regulations provide for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices,* a publication of the National Agricultural Statistics Service

(NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in the **Federal Register** (68 FR 27898) for the purpose of calculating supplemental assessments on imported cotton is $0.8267 cents per kilogram. Using the Average Weighted Price received by U.S. farmers for Upland cotton for the calendar year 2007, the new value of imported cotton is $0.9874 cents per kilogram or $0.1607 cents per kilogram more than the previous value.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500-pound bale equals 226.8 kg. (500 × .453597).

$1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms.

The 2007 calendar year weighted average price received by producers for Upland cotton is $0.496 per pound or $1.093 per kg. (0.496 × 2.2046).

Five tenths of one percent of the average price in kg. equals $0.005465 per kg. (1.093 × .005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.005465 per kg. which equals $0.009874 per kg.

The current assessment on imported cotton is $0.008267 per kilogram of imported cotton. The proposed assessment is $0.009874, an increase of $0.001607 per kilogram. This increase reflects the increase in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 2007.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b) (3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each HTS numbers subject to assessment.

The U.S. Customs and Border Protection informed the agency that several numbers listed in the Import Assessment Table are no longer used or have been combined with other HTS numbers. The HTS numbers that have been removed from the Import Assessment Table are: 5208530000; 6109100005; 6203424005; 6203424050; 6204624040; 6205202030; 6206303020; 5210120000; 6109100009; 6203424010; 6203424055; 6204624045; 6205202035; 6206303030; 5211210025; 6110202065; 6203424015; 6203424060; 6204624050; 6205202046; 6206303040; 5211210035; 6110202075; 6203424020; 6204624005; 6204624055; 6205202050; 6206303050; 5211210050; 6111206040; 6203424025; 6204624010; 6204624060; 6205202060; 6206303060; 5211290090; 6111305040; 6203424030; 6204624020; 6204624065; 6205202065; 6210405020; 5604900000; 6115198010; 6203424035; 6204624025; 6205202015; 6205202070; 6303110000; 5702991010; 6115929000; 6203424040; 6204624030; 6205202020; 6205202075; 5702991090; 6115936020; 6203424045; 6204624035; 6205202025; 6206303010.

A 60-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would increase the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $6,500,000. An estimated 13,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

This proposed rule would only affect importers of cotton and cotton-containing products and would raise the assessments paid by the importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is $0.008267 per kilogram of imported cotton. The proposed assessment is $0.009874, an increase of $0.001607, which was calculated based on the 12-month average of monthly weighted average prices received by U.S. cotton farmers. The calculation, and, thus the increase, is dictated by the Cotton Research and Promotion Rules and Regulations, 7 CFR 1205.510. Section 1205.510, ''Levy of assessments'', indicates that ''the rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States.'' In addition, section 1205.510 provides that the 12-month average of monthly weighted average prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton.

Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In 2007, producer assessments totaled $44 million and importer assessments totaled $30.4 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2007, one could expect the increased assessment to generate approximately $5.9 million.

Importers with line-items appearing on U.S. Customs and Border Protection documentation with value of the cotton contained therein results of an assessment of two dollars ($2.00) or less will not be subject to assessments. In addition, imported cotton and products may be exempt from assessment if the cotton content of products is U.S. produced, cotton other than Upland, or imported products that are eligible to be labeled as 100 percent organic under the National Organic Program (7 CFR Part 205) and who is not a split operation.

The rule does not impose additional recordkeeping requirements on importers.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements

contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.9874 cents per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.9874
5201001200	0	0.9874
5201001400	0	0.9874
5201001800	0	0.9874
5201002200	0	0.9874
5201002400	0	0.9874
5201002800	0	0.9874
5201003400	0	0.9874
5201003800	0	0.9874
5204110000	1.1111	1.0971
5204200000	1.1111	1.0971
5205111000	1.1111	1.0971
5205112000	1.1111	1.0971
5205121000	1.1111	1.0971
5205122000	1.1111	1.0971
5205131000	1.1111	1.0971
5205132000	1.1111	1.0971
5205141000	1.1111	1.0971
5205210020	1.1111	1.0971
5205210090	1.1111	1.0971
5205220020	1.1111	1.0971

IMPORT ASSESSMENT TABLE—Continued

(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
5205220090	1.1111	1.0971
5205230020	1.1111	1.0971
5205230090	1.1111	1.0971
5205240020	1.1111	1.0971
5205240090	1.1111	1.0971
5205310000	1.1111	1.0971
5205320000	1.1111	1.0971
5205330000	1.1111	1.0971
5205340000	1.1111	1.0971
5205410020	1.1111	1.0971
5205410090	1.1111	1.0971
5205420020	1.1111	1.0971
5205420090	1.1111	1.0971
5205440020	1.1111	1.0971
5205440090	1.1111	1.0971
5206120000	0.5556	0.5486
5206130000	0.5556	0.5486
5206140000	0.5556	0.5486
5206220000	0.5556	0.5486
5206230000	0.5556	0.5486
5206240000	0.5556	0.5486
5206310000	0.5556	0.5486
5207100000	1.1111	1.0971
5207900000	0.5556	0.5486
5208112020	1.1455	1.1311
5208112040	1.1455	1.1311
5208112090	1.1455	1.1311
5208114020	1.1455	1.1311
5208114060	1.1455	1.1311
5208114090	1.1455	1.1311
5208118090	1.1455	1.1311
5208124020	1.1455	1.1311
5208124040	1.1455	1.1311
5208124090	1.1455	1.1311
5208126020	1.1455	1.1311
5208126040	1.1455	1.1311
5208126060	1.1455	1.1311
5208126090	1.1455	1.1311
5208128020	1.1455	1.1311
5208128090	1.1455	1.1311
5208130000	1.1455	1.1311
5208192020	1.1455	1.1311
5208192090	1.1455	1.1311
5208194020	1.1455	1.1311
5208194090	1.1455	1.1311
5208196020	1.1455	1.1311
5208196090	1.1455	1.1311
5208224040	1.1455	1.1311
5208224090	1.1455	1.1311
5208226020	1.1455	1.1311
5208226060	1.1455	1.1311
5208228020	1.1455	1.1311
5208230000	1.1455	1.1311
5208292020	1.1455	1.1311
5208292090	1.1455	1.1311
5208294090	1.1455	1.1311
5208296090	1.1455	1.1311
5208298020	1.1455	1.1311
5208312000	1.1455	1.1311
5208321000	1.1455	1.1311
5208323020	1.1455	1.1311
5208323040	1.1455	1.1311
5208323090	1.1455	1.1311
5208324020	1.1455	1.1311
5208324040	1.1455	1.1311
5208325020	1.1455	1.1311
5208330000	1.1455	1.1311
5208392020	1.1455	1.1311
5208392090	1.1455	1.1311

IMPORT ASSESSMENT TABLE—Continued

(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
5208394090	1.1455	1.1311
5208396090	1.1455	1.1311
5208398020	1.1455	1.1311
5208412000	1.1455	1.1311
5208416000	1.1455	1.1311
5208418000	1.1455	1.1311
5208421000	1.1455	1.1311
5208423000	1.1455	1.1311
5208424000	1.1455	1.1311
5208425000	1.1455	1.1311
5208430000	1.1455	1.1311
5208492000	1.1455	1.1311
5208494020	1.1455	1.1311
5208494090	1.1455	1.1311
5208496010	1.1455	1.1311
5208496090	1.1455	1.1311
5208498090	1.1455	1.1311
5208512000	1.1455	1.1311
5208516060	1.1455	1.1311
5208518090	1.1455	1.1311
5208523020	1.1455	1.1311
5208523045	1.1455	1.1311
5208523090	1.1455	1.1311
5208524020	1.1455	1.1311
5208524045	1.1455	1.1311
5208524065	1.1455	1.1311
5208525020	1.1455	1.1311
5208592025	1.1455	1.1311
5208592095	1.1455	1.1311
5208594090	1.1455	1.1311
5208596090	1.1455	1.1311
5209110020	1.1455	1.1311
5209110035	1.1455	1.1311
5209110090	1.1455	1.1311
5209120020	1.1455	1.1311
5209120040	1.1455	1.1311
5209190020	1.1455	1.1311
5209190040	1.1455	1.1311
5209190060	1.1455	1.1311
5209190090	1.1455	1.1311
5209210090	1.1455	1.1311
5209220020	1.1455	1.1311
5209220040	1.1455	1.1311
5209290040	1.1455	1.1311
5209290090	1.1455	1.1311
5209313000	1.1455	1.1311
5209316020	1.1455	1.1311
5209316035	1.1455	1.1311
5209316050	1.1455	1.1311
5209316090	1.1455	1.1311
5209320020	1.1455	1.1311
5209320040	1.1455	1.1311
5209390020	1.1455	1.1311
5209390040	1.1455	1.1311
5209390060	1.1455	1.1311
5209390080	1.1455	1.1311
5209390090	1.1455	1.1311
5209413000	1.1455	1.1311
5209416020	1.1455	1.1311
5209416040	1.1455	1.1311
5209420020	1.0309	1.0179
5209420040	1.0309	1.0179
5209430030	1.1455	1.1311
5209430050	1.1455	1.1311
5209490020	1.1455	1.1311
5209490090	1.1455	1.1311
5209516035	1.1455	1.1311
5209516050	1.1455	1.1311
5209520020	1.1455	1.1311

IMPORT ASSESSMENT TABLE—Continued
(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
5209590025	1.1455	1.1311
5209590040	1.1455	1.1311
5209590090	1.1455	1.1311
5210114020	0.6873	0.6786
5210114040	0.6873	0.6786
5210116020	0.6873	0.6786
5210116040	0.6873	0.6786
5210116060	0.6873	0.6786
5210118020	0.6873	0.6786
5210192090	0.6873	0.6786
5210214040	0.6873	0.6786
5210216020	0.6873	0.6786
5210216060	0.6873	0.6786
5210218020	0.6873	0.6786
5210314020	0.6873	0.6786
5210314040	0.6873	0.6786
5210316020	0.6873	0.6786
5210318020	0.6873	0.6786
5210414000	0.6873	0.6786
5210416000	0.6873	0.6786
5210418000	0.6873	0.6786
5210498090	0.6873	0.6786
5210514040	0.6873	0.6786
5210516020	0.6873	0.6786
5210516040	0.6873	0.6786
5210516060	0.6873	0.6786
5211110090	0.6873	0.6786
5211120020	0.6873	0.6786
5211190020	0.6873	0.6786
5211190060	0.6873	0.6786
5211320020	0.6873	0.6786
5211390040	0.6873	0.6786
5211390060	0.6873	0.6786
5211490020	0.6873	0.6786
5211490090	0.6873	0.6786
5211590025	0.6873	0.6786
5212146090	0.9164	0.9049
5212156020	0.9164	0.9049
5212216090	0.9164	0.9049
5509530030	0.5556	0.5486
5509530060	0.5556	0.5486
5513110020	0.4009	0.3958
5513110040	0.4009	0.3958
5513110060	0.4009	0.3958
5513110090	0.4009	0.3958
5513120000	0.4009	0.3958
5513130020	0.4009	0.3958
5513210020	0.4009	0.3958
5513310000	0.4009	0.3958
5514120020	0.4009	0.3958
5516420060	0.4009	0.3958
5516910060	0.4009	0.3958
5516930090	0.4009	0.3958
5601210010	1.1455	1.1311
5601210090	1.1455	1.1311
5601300000	1.1455	1.1311
5602109090	0.5727	0.5655
5602290000	1.1455	1.1311
5602906000	0.526	0.5194
5607909000	0.8889	0.8777
5608901000	1.1111	1.0971
5608902300	1.1111	1.0971
5609001000	1.1111	1.0971
5609004000	0.5556	0.5486
5701104000	0.0556	0.0549
5701109000	0.1111	0.1097
5701901010	1.0444	1.0312
5702109020	1.1	1.0861
5702312000	0.0778	0.0768

IMPORT ASSESSMENT TABLE—Continued
(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
5702411000	0.0722	0.0713
5702412000	0.0778	0.0768
5702421000	0.0778	0.0768
5702913000	0.0889	0.0878
5703900000	0.4489	0.4432
5801210000	1.1455	1.1311
5801230000	1.1455	1.1311
5801250010	1.1455	1.1311
5801250020	1.1455	1.1311
5801260020	1.1455	1.1311
5802190000	1.1455	1.1311
5802300030	0.5727	0.5655
5804291000	1.1455	1.1311
5806200010	0.3534	0.3489
5806200090	0.3534	0.3489
5806310000	1.1455	1.1311
5806400000	0.4296	0.4242
5808107000	0.5727	0.5655
5808900010	0.5727	0.5655
5811002000	1.1455	1.1311
6001106000	1.1455	1.1311
6001210000	0.8591	0.8483
6001220000	0.2864	0.2828
6001910010	0.8591	0.8483
6001910020	0.8591	0.8483
6001920020	0.2864	0.2828
6001920030	0.2864	0.2828
6001920040	0.2864	0.2828
6003203000	0.8681	0.8572
6003306000	0.2894	0.2858
6003406000	0.2894	0.2858
6005210000	0.8681	0.8572
6005220000	0.8681	0.8572
6005230000	0.8681	0.8572
6005240000	0.8681	0.8572
6005310010	0.2894	0.2858
6005310080	0.2894	0.2858
6005320010	0.2894	0.2858
6005320080	0.2894	0.2858
6005330010	0.2894	0.2858
6005330080	0.2894	0.2858
6005340010	0.2894	0.2858
6005340080	0.2894	0.2858
6005410010	0.2894	0.2858
6005410080	0.2894	0.2858
6005420010	0.2894	0.2858
6005420080	0.2894	0.2858
6005430010	0.2894	0.2858
6005430080	0.2894	0.2858
6005440010	0.2894	0.2858
6005440080	0.2894	0.2858
6006211000	1.1574	1.1428
6006221000	1.1574	1.1428
6006231000	1.1574	1.1428
6006241000	1.1574	1.1428
6006310040	0.1157	0.1142
6006310080	0.1157	0.1142
6006320040	0.1157	0.1142
6006320080	0.1157	0.1142
6006330040	0.1157	0.1142
6006330080	0.1157	0.1142
6006340040	0.1157	0.1142
6006340080	0.1157	0.1142
6006410085	0.1157	0.1142
6006420085	0.1157	0.1142
6006430085	0.1157	0.1142
6006440085	0.1157	0.1142
6101200010	1.0094	0.9967
6101200020	1.0094	0.9967

IMPORT ASSESSMENT TABLE—Continued
(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
6102200010	1.0094	0.9967
6102200020	1.0094	0.9967
6103421020	0.8806	0.8695
6103421040	0.8806	0.8695
6103421050	0.8806	0.8695
6103421070	0.8806	0.8695
6103431520	0.2516	0.2484
6103431540	0.2516	0.2484
6103431550	0.2516	0.2484
6103431570	0.2516	0.2484
6104220040	0.9002	0.8889
6104220060	0.9002	0.8889
6104320000	0.9207	0.9091
6104420010	0.9002	0.8889
6104420020	0.9002	0.8889
6104520010	0.9312	0.9195
6104520020	0.9312	0.9195
6104622006	0.8806	0.8695
6104622011	0.8806	0.8695
6104622016	0.8806	0.8695
6104622021	0.8806	0.8695
6104622026	0.8806	0.8695
6104622028	0.8806	0.8695
6104622030	0.8806	0.8695
6104622060	0.8806	0.8695
6104632006	0.3774	0.3726
6104632011	0.3774	0.3726
6104632026	0.3774	0.3726
6104632028	0.3774	0.3726
6104632030	0.3774	0.3726
6104632060	0.3774	0.3726
6104692030	0.3858	0.3809
6105100010	0.985	0.9726
6105100020	0.985	0.9726
6105100030	0.985	0.9726
6105202010	0.3078	0.3039
6105202030	0.3078	0.3039
6106100010	0.985	0.9726
6106100020	0.985	0.9726
6106100030	0.985	0.9726
6106202010	0.3078	0.3039
6106202030	0.3078	0.3039
6107110010	1.1322	1.1179
6107110020	1.1322	1.1179
6107120010	0.5032	0.4969
6107210010	0.8806	0.8695
6107220015	0.3774	0.3726
6107220025	0.3774	0.3726
6107910040	1.2581	1.2422
6108210010	1.2445	1.2288
6108210020	1.2445	1.2288
6108310010	1.1201	1.1060
6108310020	1.1201	1.1060
6108320010	0.2489	0.2458
6108320015	0.2489	0.2458
6108320025	0.2489	0.2458
6108910005	1.2445	1.2288
6108910015	1.2445	1.2288
6108910025	1.2445	1.2288
6108910030	1.2445	1.2288
6108920030	0.2489	0.2458
6109100007	0.9956	0.9831
6109100012	0.9956	0.9831
6109100014	0.9956	0.9831
6109100018	0.9956	0.9831
6109100023	0.9956	0.9831
6109100027	0.9956	0.9831
6109100037	0.9956	0.9831
6109100040	0.9956	0.9831

IMPORT ASSESSMENT TABLE—Continued
(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
6109100045	0.9956	0.9831
6109100060	0.9956	0.9831
6109100065	0.9956	0.9831
6109100070	0.9956	0.9831
6109901007	0.3111	0.3072
6109901009	0.3111	0.3072
6109901049	0.3111	0.3072
6109901050	0.3111	0.3072
6109901060	0.3111	0.3072
6109901065	0.3111	0.3072
6109901090	0.3111	0.3072
6110202005	1.1837	1.1688
6110202010	1.1837	1.1688
6110202015	1.1837	1.1688
6110202020	1.1837	1.1688
6110202025	1.1837	1.1688
6110202030	1.1837	1.1688
6110202035	1.1837	1.1688
6110202040	1.1574	1.1428
6110202045	1.1574	1.1428
6110909022	0.263	0.2597
6110909024	0.263	0.2597
6110909030	0.3946	0.3896
6110909040	0.263	0.2597
6110909042	0.263	0.2597
6111201000	1.2581	1.2422
6111202000	1.2581	1.2422
6111203000	1.0064	0.9937
6111205000	1.0064	0.9937
6111206010	1.0064	0.9937
6111206020	1.0064	0.9937
6111206030	1.0064	0.9937
6111305020	0.2516	0.2484
6112110050	0.7548	0.7453
6112120010	0.2516	0.2484
6112120030	0.2516	0.2484
6112120040	0.2516	0.2484
6112120050	0.2516	0.2484
6112120060	0.2516	0.2484
6112390010	1.1322	1.1179
6112490010	0.9435	0.9316
6114200005	0.9002	0.8889
6114200010	0.9002	0.8889
6114200015	0.9002	0.8889
6114200020	1.286	1.2698
6114200040	0.9002	0.8889
6114200046	0.9002	0.8889
6114200052	0.9002	0.8889
6114200060	0.9002	0.8889
6114301010	0.2572	0.2540
6114301020	0.2572	0.2540
6114303030	0.2572	0.2540
6116101300	0.3655	0.3609
6116101720	0.8528	0.8421
6116926420	1.0965	1.0827
6116926430	1.2183	1.2029
6116926440	1.0965	1.0827
6116928800	1.0965	1.0827
6117809510	0.9747	0.9624
6117809540	0.3655	0.3609
6201121000	0.948	0.9361
6201122010	0.8953	0.8840
6201122050	0.6847	0.6761
6201122060	0.6847	0.6761
6201134030	0.2633	0.2600
6201921000	0.9267	0.9150
6201921500	1.1583	1.1437
6201922010	1.0296	1.0166
6201922021	1.2871	1.2709

IMPORT ASSESSMENT TABLE—Continued
(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
6201922031	1.2871	1.2709
6201922041	1.2871	1.2709
6201922051	1.0296	1.0166
6201922061	1.0296	1.0166
6201931000	0.3089	0.3050
6201933511	0.2574	0.2542
6201933521	0.2574	0.2542
6201999060	0.2574	0.2542
6202121000	0.9372	0.9254
6202122010	1.1064	1.0925
6202122025	1.3017	1.2853
6202122050	0.8461	0.8354
6202122060	0.8461	0.8354
6202134005	0.2664	0.2630
6202134020	0.333	0.3288
6202921000	1.0413	1.0282
6202921500	1.0413	1.0282
6202922026	1.3017	1.2853
6202922061	1.0413	1.0282
6202922071	1.0413	1.0282
6202931000	0.3124	0.3085
6202935011	0.2603	0.2570
6202935021	0.2603	0.2570
6203122010	0.1302	0.1286
6203221000	1.3017	1.2853
6203322010	1.2366	1.2210
6203322040	1.2366	1.2210
6203332010	0.1302	0.1286
6203392010	1.1715	1.1567
6203399060	0.2603	0.2570
6203422010	0.9961	0.9835
6203422025	0.9961	0.9835
6203422050	0.9961	0.9835
6203422090	0.9961	0.9835
6203431500	0.1245	0.1229
6203434010	0.1232	0.1216
6203434020	0.1232	0.1216
6203434030	0.1232	0.1216
6203434040	0.1232	0.1216
6203498045	0.249	0.2459
6204132010	0.1302	0.1286
6204192000	0.1302	0.1286
6204198090	0.2603	0.2570
6204221000	1.3017	1.2853
6204223030	1.0413	1.0282
6204223040	1.0413	1.0282
6204223050	1.0413	1.0282
6204223060	1.0413	1.0282
6204223065	1.0413	1.0282
6204292040	0.3254	0.3213
6204322010	1.2366	1.2210
6204322030	1.0413	1.0282
6204322040	1.0413	1.0282
6204423010	1.2728	1.2568
6204423030	0.9546	0.9426
6204423040	0.9546	0.9426
6204423050	0.9546	0.9426
6204423060	0.9546	0.9426
6204522010	1.2654	1.2495
6204522030	1.2654	1.2495
6204522040	1.2654	1.2495
6204522070	1.0656	1.0522
6204522080	1.0656	1.0522
6204533010	0.2664	0.2630
6204594060	0.2664	0.2630
6204622010	0.9961	0.9835
6204622025	0.9961	0.9835
6204622050	0.9961	0.9835
6204633510	0.2546	0.2514

IMPORT ASSESSMENT TABLE—Continued
(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
6204633530	0.2546	0.2514
6204633532	0.2437	0.2406
6204633540	0.2437	0.2406
6204692510	0.249	0.2459
6204692540	0.2437	0.2406
6204699044	0.249	0.2459
6204699046	0.249	0.2459
6204699050	0.249	0.2459
6205302010	0.3113	0.3074
6205302030	0.3113	0.3074
6205302040	0.3113	0.3074
6205302050	0.3113	0.3074
6205302080	0.3113	0.3074
6206100040	0.1245	0.1229
6206403010	0.3113	0.3074
6206403030	0.3113	0.3074
6206900040	0.249	0.2459
6207110000	1.0852	1.0715
6207199010	0.3617	0.3571
6207210030	1.1085	1.0945
6207220000	0.3695	0.3648
6207911000	1.1455	1.1311
6207913010	1.1455	1.1311
6207913020	1.1455	1.1311
6208210010	1.0583	1.0450
6208210020	1.0583	1.0450
6208220000	0.1245	0.1229
6208911010	1.1455	1.1311
6208911020	1.1455	1.1311
6208913010	1.1455	1.1311
6209201000	1.1577	1.1431
6209203000	0.9749	0.9626
6209205030	0.9749	0.9626
6209205035	0.9749	0.9626
6209205040	1.2186	1.2032
6209205045	0.9749	0.9626
6209205050	0.9749	0.9626
6209303020	0.2463	0.2432
6209303040	0.2463	0.2432
6210109010	0.2291	0.2262
6210403000	0.0391	0.0386
6211111010	0.1273	0.1257
6211111020	0.1273	0.1257
6211118010	1.1455	1.1311
6211118020	1.1455	1.1311
6211320007	0.8461	0.8354
6211320010	1.0413	1.0282
6211320015	1.0413	1.0282
6211320030	0.9763	0.9640
6211320060	0.9763	0.9640
6211320070	0.9763	0.9640
6211330010	0.3254	0.3213
6211330030	0.3905	0.3856
6211330035	0.3905	0.3856
6211330040	0.3905	0.3856
6211420010	1.0413	1.0282
6211420020	1.0413	1.0282
6211420025	1.1715	1.1567
6211420060	1.0413	1.0282
6211420070	1.1715	1.1567
6211430010	0.2603	0.2570
6211430030	0.2603	0.2570
6211430040	0.2603	0.2570
6211430050	0.2603	0.2570
6211430060	0.2603	0.2570
6211430066	0.2603	0.2570
6212105020	0.2412	0.2382
6212109010	0.9646	0.9524
6212109020	0.2412	0.2382

IMPORT ASSESSMENT TABLE—Continued

(Raw Cotton Fiber)

HTS No.	Conv. fact.	Cents/kg.
6212200020	0.3014	0.2976
6212900030	0.1929	0.1905
6213201000	1.1809	1.1660
6213202000	1.0628	1.0494
6213901000	0.4724	0.4664
6214900010	0.9043	0.8929
6216000800	0.2351	0.2321
6216001720	0.6752	0.6667
6216003800	1.2058	1.1906
6216004100	1.2058	1.1906
6217109510	1.0182	1.0054
6217109530	0.2546	0.2514
6301300010	0.8766	0.8656
6301300020	0.8766	0.8656
6302100005	1.1689	1.1542
6302100008	1.1689	1.1542
6302100015	1.1689	1.1542
6302215010	0.8182	0.8079
6302215020	0.8182	0.8079
6302217010	1.1689	1.1542
6302217020	1.1689	1.1542
6302217050	1.1689	1.1542
6302219010	0.8182	0.8079
6302219020	0.8182	0.8079
6302219050	0.8182	0.8079
6302222010	0.4091	0.4039
6302222020	0.4091	0.4039
6302313010	0.8182	0.8079
6302313050	1.1689	1.1542
6302315050	0.8182	0.8079
6302317010	1.1689	1.1542
6302317020	1.1689	1.1542
6302317040	1.1689	1.1542
6302317050	1.1689	1.1542
6302319010	0.8182	0.8079
6302319040	0.8182	0.8079
6302319050	0.8182	0.8079
6302322020	0.4091	0.4039
6302322040	0.4091	0.4039
6302402010	0.9935	0.9810
6302511000	0.5844	0.5770
6302512000	0.8766	0.8656
6302513000	0.5844	0.5770
6302514000	0.8182	0.8079
6302600010	1.1689	1.1542
6302600020	1.052	1.0387
6302600030	1.052	1.0387
6302910005	1.052	1.0387
6302910015	1.1689	1.1542
6302910025	1.052	1.0387
6302910035	1.052	1.0387
6302910045	1.052	1.0387
6302910050	1.052	1.0387
6302910060	1.052	1.0387
6303910010	0.6429	0.6348
6303910020	0.6429	0.6348
6304111000	1.0629	1.0495
6304190500	1.052	1.0387
6304191000	1.1689	1.1542
6304191500	0.4091	0.4039
6304192000	0.4091	0.4039
6304910020	0.9351	0.9233
6304920000	0.9351	0.9233
6505302070	0.3113	0.3074
6505901540	0.181	0.1787
6505902060	0.9935	0.9810
6505902545	0.5844	0.5770

* * * * *

Authority: 7 U.S.C. 2101–2118.

Dated: July 21, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–16957 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. APHIS–2006–0193]

RIN 0579–AC65

Tuberculosis; Require Approved Herd Plans Prior to Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the payment of indemnity for animals destroyed because of bovine tuberculosis to provide that an approved herd plan must be in place prior to the payment of indemnity, and to provide that 10 percent of the gross indemnity payment be withheld by the Animal and Plant Health Inspection Service until the conditions of an approved herd plan have been implemented. We are also proposing to amend the regulations to deny payments of Federal indemnity for a herd whose owner has failed to follow the provisions of an approved herd plan, or has violated the conditions of an approved herd plan. We believe these proposed changes would further tuberculosis eradication efforts in the United States and protect livestock not affected with tuberculosis from the disease.

DATES: We will consider all comments that we receive on or before September 22, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0193* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2006–0193, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0193.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, VS, APHIS, 2150 Centre Avenue, Building B, MS 3E20, Ft. Collins, CO 80526; (970) 494–7378.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations implementing the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock are contained in 9 CFR part 77, ''Tuberculosis,'' and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

Since 1998, a total of 78 livestock herds have become affected with tuberculosis in the United States, and at least 4 of these herds were on premises where herds previously had been affected with tuberculosis and had either been depopulated and the herd owners paid Federal and State indemnity or undergone the approved quarantine, test, and removal program. Research has shown that there are ways to mitigate the spread of infection from wildlife to livestock, and herd plans have been developed for numerous herds specifying the mitigations that owners must implement to prevent reinfection.

In order to place more responsibility on owners to adhere to prescribed mitigation measures and protect their herds from reinfection, we are proposing to amend the regulations

regarding the payment of indemnity for animals destroyed because of bovine tuberculosis to provide that an approved herd plan be in place prior to the payment of indemnity, and to provide that 10 percent of the gross indemnity payment will be withheld by the Animal and Plant Health Inspection Service (APHIS) until the conditions of the herd plan have been implemented. We are also proposing to amend the regulations to deny payments of Federal indemnity for herds whose owners have failed to follow the provisions of an approved herd plan, or have violated the conditions of an approved herd plan. We believe that by linking implementation of an approved herd plan and compliance with it to eligibility for Federal indemnity, we would further tuberculosis eradication efforts in the United States and protect livestock not affected with tuberculosis from the disease.

Approved Herd Plans

An approved herd plan is a herd management and testing plan based on the disease history and movement patterns of an individual herd, designed by the herd owner and a State representative or APHIS representative to determine the disease status of livestock in the herd and to eradicate tuberculosis within the herd. The plan must be jointly approved by the State animal health official and the Veterinarian in Charge. The herd plan must include appropriate herd test frequencies, tests to be employed, and any additional disease management or herd management practices deemed necessary to eradicate tuberculosis from the herd and prevent further spread of infection in an efficient and effective manner. Approved herd plans generally require a change in herd management, construction of barriers, pest control, and, in some cases, additional surveillance for tuberculosis on the owner's property. Thus, in most cases, compliance with an approved herd plan will be evident during a site visit and would not require the owner to provide any additional information or documentation.

Approved Herd Plans Linked to Indemnity

The existing regulations do not require herd owners who have tuberculosis-infected livestock to have an approved herd plan, nor do the regulations penalize owners whose subsequent failure to follow an approved herd plan results in reinfection of the herd or the infection of a replacement herd.

For owners that agree to follow an approved herd plan, the proposed rule would not change the amount of indemnity for which the herd owner is eligible; it would merely provide that only 90 percent of the gross indemnity payment be made after a herd plan has been approved and that 10 percent of the gross indemnity payment be withheld until the herd plan is effectively implemented. This change would provide owners with a strong incentive for participation because eligibility for Federal indemnity payments would be linked to participation in the program. This change would also provide an incentive for States to enforce approved herd plans and take action if owners are not adhering to them. The incentive to do so comes from the indirect effect of not having Federal indemnity available. Under sec. 10407(d) of the Animal Health Protection Act (AHPA) (7 U.S.C. 8306(d)), no payment of indemnity will be made for ''any animal, article, facility, or means of conveyance that becomes or has become affected with or exposed to any pest or disease of livestock because of a violation of an agreement for the control and eradication of diseases or pests [such as an approved herd plan] or a violation of this subtitle [i.e., the AHPA] by the owner.'' Accordingly, if a herd was to become reinfected as a result of a herd owner's failure to follow an approved herd plan and, pursuant to the AHPA, the owner was denied Federal indemnity, the affected State would have to pay the costs of indemnity or the herd would remain in place under quarantine. If a sufficient number of affected herds were detected and not depopulated, it could ultimately result in a downgrade of the State's tuberculosis status.

Similar Disease Programs

While these proposed changes would be new to the tuberculosis eradication program, similar strategies have been used in other plant and animal disease programs. Two such programs include the cooperative infectious salmon anemia (ISA) control program administered by APHIS and the State of Maine, and the voluntary control programs for low pathogenicity H5 and H7 avian influenza in poultry (LPAI). These programs provide strong incentives for participation because eligibility for Federal indemnity payments is linked to participation in the programs.

Regulations in 9 CFR part 53 provide that, in order for producers in the State of Maine to receive indemnity for fish destroyed because of ISA, claimants must participate fully in the cooperative ISA control program described in § 53.10(e). An economic analysis we prepared in connection with the rulemaking that established those regulations cited several benefits that flowed from those requirements, including reduced costs to the Maine salmon industry from animal mortality, costs from possible State regulatory actions, and trade restrictions on U.S. salmon product exports. In addition, an aggressive program early on, while the number of known affected pens was reasonably small, obviated the need for higher future Federal costs to contain a more widespread outbreak. As a result of the ISA program, one-half of Maine's salmon industry (along the West Coast of Cobscook Bay) avoided exposure to ISA.

Similarly, the regulations for the control of H5/H7 LPAI and a new indemnity program (9 CFR parts 56, 146, and 147) as part of the National Poultry Improvement Plan (NPIP) provide for the authority to pay indemnity of 100 percent of eligible costs associated with eradication of H5 and H7 LPAI for most participating producers and provide for the establishment of cooperative agreements with participating States through which States are eligible to receive 100 percent of the costs covered under the cooperative agreements. However, to qualify for 100 percent compensation, both the State and producers must participate in the LPAI control program; otherwise the compensation rate is only 25 percent. We believe that limiting indemnity payments to only 25 percent of associated costs serves as an incentive for participation in the voluntary control program for those few commercial poultry producers and States that do not participate in the NPIP and for those breeding poultry producers who participate in NPIP but not in its LPAI programs. Thus, given the expected participation rates among commercial growers and States, nearly all producers and States will qualify for 100 percent indemnification in an H5 or H7 outbreak.

Payment to Owners for Animals Destroyed

Section 50.3 of the regulations provides that we will pay indemnity to owners for cattle, bison, or captive cervids destroyed because of bovine tuberculosis, and sets a limit on the amount of joint State-Federal indemnity payment the owner receives when the animals are slaughtered.

We propose to amend § 50.3 by adding a new paragraph (c) that would provide for the payment of 90 percent

of the gross indemnity amount for which the herd owner is eligible after a herd plan has been approved. APHIS would withhold the remaining 10 percent of the gross indemnity until the Veterinarian in Charge or official designated by him has conducted a site visit and has found that the herd owner has implemented the approved herd plan.

Claims for Indemnity

Section 50.12 includes provisions for making a claim for indemnity for cattle, bison, or captive cervids destroyed because of tuberculosis. Currently, the regulations provide that payment will be made only if the APHIS indemnity claim form has been approved by a proper State official and if payment of the claim has been recommended by the appropriate Veterinarian in Charge or an official designated by him. We would amend this section by adding the requirement that an approved herd plan be jointly completed by the herd owner and the State or Federal veterinarian as required under § 50.3(c) before a claimant may receive indemnity.

Claims Not Allowed

Section 50.14 provides that claims for compensation for cattle, bison, or captive cervids destroyed because of tuberculosis will not be allowed under certain specified conditions. For instance, indemnity will not be allowed if all cattle, bison, or captive cervids in the claimant's herd have not been tested for tuberculosis, except under certain specified conditions. Nor will claims be paid if there is substantial evidence that the owner of the animals has attempted to obtain indemnity unlawfully or improperly.

We are proposing to amend the regulations in § 50.14 to ensure that producers have in place, and comply with the requirements of, an approved herd plan in order to receive Federal indemnity payments for livestock destroyed because of tuberculosis. We would add a new paragraph (h) to provide that claims for compensation will not be allowed unless an approved herd plan is in place that has been jointly approved by the herd owner(s) and/or their representative(s) and a State or Federal veterinarian as required under § 50.3(c). We would also add a new paragraph (i) to provide that claims for indemnity for livestock that have become reinfected with or exposed to tuberculosis because the claimant has failed to follow the provisions of an approved herd plan or has otherwise violated the conditions of an approved herd plan will not be allowed.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations regarding the payment of indemnity for animals destroyed because of bovine tuberculosis to provide that an approved herd plan must be in place prior to the payment of indemnity, and to provide that 10 percent of the gross indemnity amount be held by APHIS until the conditions of an approved herd plan have been implemented. We are also proposing to amend the regulations to deny payments of Federal indemnity for a herd whose owner has failed to follow an approved herd plan, or has violated the conditions of an approved herd plan. We believe these proposed changes would further tuberculosis eradication efforts in the United States and protect livestock not affected with tuberculosis from the disease.

For this rule, we have prepared an economic analysis. The analysis considers the potential economic effects of the proposed changes on small entities, as required by the Regulatory Flexibility Act, and provides a discussion of the potential costs and benefits, as required by Executive Order 12866.

The economic affects associated with the proposed changes are likely to be limited. There are about 1 million cattle herds in the United States. Over the past 5 years, only about 1 out of every 100,000 cattle herds in the United States have been affected by bovine tuberculosis (table 1). Since 1998, there have been 78 tuberculosis-infected livestock herds in the United States. Of the 78 infected herds, 4 were on premises that had previously contained tuberculosis-infected herds. Had the provisions we are proposing in this document been in place, these four herds would have been denied Federal indemnity only if the herd owners had not followed specific requirements in the herd plan intended to prevent reinfection. Herd plans have been used for many years in the tuberculosis program. Because herd plans are routinely used and because this proposed rule would not change the amount of the indemnity for which the herd owner is eligible, the costs associated with the proposed changes in terms of forgone indemnity payments are expected to be minimal.

TABLE 1.—NUMBER OF BOVINE TUBERCULOSIS (TB) CASES NOT OF FOREIGN ORIGIN PER YEAR AND PERCENTAGE OF U.S. HERDS AFFECTED, FISCAL YEARS 2003–2007

Fiscal year	Number of positive TB cases not of foreign origin	Total number of U.S. cattle herds	Percentage of U.S. cattle herds affected by TB [1]
2003	11	1,013,570	< 0.0011
2004	14	989,460	< 0.0015
2005	13	982,510	< 0.0014
2006	2	971,400	< 0.0002
2007	9	971,400	< 0.0010

Source: Adapted from the table at *http://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/tb_erad.pdf.*
[1] Two or more positive tuberculosis cases may have the same herd of origin.

Since 2001, APHIS has paid $91 million in tuberculosis indemnities. The amount paid out in indemnities depends on a number of variables specific to each individual herd. Experience demonstrates that reasonable estimates of indemnity payments per animal range from $1,000 to $1,200 for beef cattle and from $2,100 to $2,300 for dairy cattle. Records show that over the last decade, the average tuberculosis-affected dairy herd contained about 2,150 animals, and the average tuberculosis-affected beef herd contained about 170 animals. Based on

these ranges for indemnity payments, the depopulation of a single reinfected beef herd of average size could cost the Federal government between $170,000 and $200,000 in indemnities, and the depopulation of a single reinfected dairy herd of average size could cost between $4.5 million and $4.9 million in indemnities.

The four premises where reinfections have occurred contained small numbers of cattle; the herds were about half as large as the average beef herd and less than one-twenty-fifth as large as the average dairy herd. A total of about $250,000 in indemnities was paid for the depopulation of reinfected herds on these four premises. As noted previously, these four herds would have been denied Federal indemnity under the provisions we are proposing if the herd owners had not followed specific requirements in the herd plan intended to prevent reinfection. By linking implementation of an approved herd plan and compliance with it to eligibility for Federal indemnity, we will place more responsibility on owners to adhere to prescribed mitigation measures and protect their herds from reinfection. We believe this would further tuberculosis eradication efforts in the United States and protect livestock not affected with tuberculosis from the disease.

According to Small Business Administration (SBA) size standards for beef cattle ranching and farming (North American Industry Classification System [NAICS] 112111) and for dairy cattle and milk production (NAICS 112120), operations with not more than $750,000 in annual sales are considered small entities. Less than 4 percent of farms in the United States have sales of more than $500,000. Because most farms in the United States are considered small by SBA standards, farm operations potentially affected by the proposed changes are likely to be small.

As noted previously, since 1998, there have been 78 livestock herds infected with tuberculosis in the United States. This is a very small portion of the total number of livestock herds. The proposed changes would only affect those premises that become reinfected with tuberculosis and are found to have not followed a herd plan to prevent reinfection. For owners that do follow a herd plan, the proposed rule would not change the amount of indemnity for which the herd owner would be eligible; it would merely provide that 90 percent of the gross indemnity payment be made after the herd plan has been approved and that 10 percent of the gross indemnity payment be held until the herd plan is implemented.

As an alternative to the proposed changes, we considered maintaining the status quo. Although the existing regulations provide for the use of approved herd plans as a post-exposure management tool, those regulations do not require the implementation of herd plans in order for herd owners who have tuberculosis-infected livestock to qualify for indemnity payments, nor do the regulations penalize owners whose subsequent failure to follow an approved herd plan results in reinfection of the herd or the infection of a replacement herd. Since 1998, a total of 78 livestock herds have become affected with tuberculosis in the United States, and at least 4 of these herds were on premises where herds previously had been affected with tuberculosis and had either been depopulated and the herd owners paid Federal and State indemnity or undergone the approved quarantine, test, and removal program. Therefore, leaving the regulations unchanged would be unsatisfactory, because it would perpetuate the current situation, i.e., one in which premises become re-infected because owners fail to implement approved herd plans.

As another alternative to the proposed changes, we considered a different set of payment criteria than is proposed. While it is possible to propose other payment options to withhold a larger or smaller percent of the Federal indemnity until the herd plan is implemented, APHIS seeks to strike a reasonable balance between making timely payment for herds that are depopulated and providing an incentive for herd owners to follow the provisions of herd plans. As such, requiring that 10 percent of the gross indemnity payment be withheld until the conditions of an approved herd plan have been implemented is a reasonable balance that addresses both objectives.

Nevertheless, we invite public comment on the proposed rule, including any comment on the expected impacts for small entities, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. Any comment suggesting changes to the proposed criteria should be supported with an explanation of why the changes should be considered. Given that a very small number of herd owners would be affected and the amount of indemnity would not change, the changes we are proposing are not likely to have any measurable economic effects. They would, however, increase the incentive for herd owners to comply with herd plans and therefore would reduce the likelihood of reinfection, which in turn would reduce the amount of Federal funds paid in indemnification. For producers generally, the proposed changes would help achieve the national goal of tuberculosis eradication.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0193. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0193, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require that an approved herd plan must be in place prior to the payment of indemnity for animals destroyed because of bovine tuberculosis, and to provide that 10 percent of the gross indemnity payment be withheld by the Animal and Plant Health Inspection Service until the

conditions of an approved herd plan have been effectively implemented, and the Veterinarian in Charge or official designated by him has conducted a site visit to attest that the herd owner is in compliance with the approved herd plan.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 25 hours per response.

Respondents: Bovine herd owners and State animal health officials.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, we propose to amend 9 CFR part 50 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 50.3 is amended by adding a new paragraph (c) to read as follows:

§ 50.3 Payment to owners for animals destroyed.

* * * * *

(c) In each case, the herd owner must cooperate with a State representative or an APHIS representative in the development of an approved herd plan in order for the owner to be eligible to receive indemnity for livestock destroyed because of tuberculosis. Once a herd plan is approved, the herd owner will be eligible for a payment of 90 percent of the gross indemnity amount. The Department will withhold the remaining 10 percent of the gross indemnity amount until the Veterinarian in Charge or official designated by him has conducted a site visit [1] and has found that the herd owner has implemented the approved herd plan.

3. In § 50.12, the third sentence is revised to read as follows:

§ 50.12 Claims for indemnity.

* * * Payment will be made only if the APHIS indemnity claim form has been approved by a proper State official, if payment of the claim has been recommended by the appropriate Veterinarian in Charge or official designated by him, and if a herd plan has been jointly approved by the herd owner(s) and/or their representative(s) and a State or Federal veterinarian as required under § 50.3(c). * * *

4. Section 50.14 is amended by adding paragraphs (h) and (i) to read as follows:

§ 50.14 Claims not allowed.

* * * * *

(h) The claimant does not have an approved herd plan in place that has been jointly approved by the herd owner(s) and/or their representative(s) and a State or Federal veterinarian as required under § 50.3(c).

(i) The herd or replacement herd has become reinfected with or exposed to tuberculosis because the claimant has failed to follow the provisions of an approved herd plan or has otherwise violated the conditions of an approved herd plan.

§ 50.20 [Amended]

5. Section 50.20 is amended by redesignating footnote 3 as footnote 2.

Done in Washington, DC, this 18th day of July 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8–16949 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–34–P

[1] A herd owner may request a site visit conducted by the Veterinarian in Charge. The location of the Veterinarian in Charge may be obtained by writing to National Center for Animal Health Program, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, or by referring to the local telephone book.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM07–21–002]

Order Requesting Supplemental Comments

Issued July 17, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Requesting Supplemental Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) requests supplemental comments on the scope and form of the reporting requirements under the expanded blanket authorization established in Order No. 708–A, which amends section 33.1(c)(12) of the Commission's regulations.

DATES: Comments are due September 22, 2008.

FOR FURTHER INFORMATION CONTACT:

Carla Urquhart (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE.,Washington, DC 20426, (202) 502–8496.

Mosby Perrow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6498.

Andrew Mosier (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6274.
Ronald Lafferty (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8026.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. In this order, the Federal Energy Regulatory Commission (Commission) seeks supplemental comments on the narrow issue of the scope and form of reporting requirements that would apply to the expanded blanket authorization under section 33.1(c)(12) of the Commission's regulations,[1] adopted in Order No. 708–A[2] issued concurrently with this order and as discussed below.

I. Background

2. In Order No. 708, the Commission amended its regulations under section 203 of the Federal Power Act (FPA) to provide for five additional blanket authorizations under FPA section 203(a)(1).[3] The Commission found that the blanket authorizations would facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions. One of the additional blanket authorizations provided that a public utility could transfer its outstanding voting securities to any holding company granted blanket authorizations in paragraph (c)(2)(ii) of FPA section 203, if after the transfer, the holding company and any of its associate or affiliate companies in aggregate would own less than 10 percent of the outstanding voting interests of such public utility. In adopting proposed regulation section 33.1(c)(12), the Commission rejected requests to extend the blanket authorization to ''any person,'' on the grounds that without increased reporting requirements, any such extension under section 33.1(c)(12) would best be made on a case-by-case basis.[4] The Commission also rejected requests to expand the reporting requirements applicable to the Commission's blanket authorizations under section 33.1 of the Commission's regulations.

3. In Order No. 708–A, the Commission granted, in part, and denied, in part, the requests for rehearing of Order No. 708. Among other things, the Commission expanded the blanket authorization under section 33.1(c)(12) to authorize a public utility to transfer its outstanding voting securities to ''any person'' other than a holding company if, after the transfer, such person and any of its associate or affiliate companies will own less than 10 percent of the outstanding voting interests of such public utility. The Commission stated that it would also adopt a reporting requirement for entities transacting under that blanket authorization. In order to properly tailor additional reporting requirements, the Commission also stated that it would issue a request for supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorizations under section 33.1(c)(12).

II. Discussion

4. As the Commission stated in Order No. 708, in order to extend the blanket authorization under section 33.1(c)(12) to include ''any person,'' the Commission would need to establish appropriate reporting requirements so that we could monitor transfers to non-holding companies. The Commission explained that, although there is a *presumption* that less than 10 percent of a utility's shares will not result in a change of control, this presumption is rebuttable. In some instances, the transfer of less than 10 percent of voting shares may constitute a transfer of control.[5] The Commission stated that it recognized that it could reduce regulatory burdens and encourage investment to allow transfers of securities not only to holding companies but to other ''persons,'' and that such transfers would not harm competition or customers as long as there was a sufficient ability to monitor possible changes in control of public utilities.

5. In Order No. 708–A, the Commission granted Financial Institutions Energy Group's (Financial Group) request to extend the blanket authorization under section 33.1(c)(12) to cover public utility dispositions to non-holding companies, subject to the same ''in aggregate'' limitations imposed on transfers to holding companies. The Commission denied American Public Power Association's and the National Rural Electric Cooperative Association's (APPA/NRECA) general request for additional reporting requirements. Nevertheless, the Commission explained that, in order to properly tailor additional reporting requirements for the expanded blanket authorization under section 33.1(c)(12), it would issue a concurrent request for supplemental comments that would seek comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization.

6. In support of its argument that the Commission should have extended the blanket authorization under section 33.1(c)(12) to cover public utility dispositions to non-holding companies, Financial Group proposed reporting requirements for transactions involving non-holding companies that it argues should be at least as helpful to the Commission as the preexisting reporting requirements applicable to holding companies. Because commenters did not have the opportunity to comment on the specific reporting requirements proposed by Financial Group, we are requesting supplemental comments on this narrow reporting issue.

7. Financial Group proposes that within a specified time following consummation of the transaction (*e.g.*, 30 days), the following information be reported: (1) Names of all parties to the transaction; (2) identification of both the pre-transaction and post-transaction voting security holdings (and the percentage ownership) in the public utility held by the acquirer and its associates or affiliate companies; (3) the date the transaction was consummated; (4) identification of any public utility or holding company affiliates of the parties to the transaction; and (5) the same type of statement currently required under section 33.2(j)(1),[6] which describes Exhibit M to an FPA section 203 filing.

8. As we have granted the blanket authorization under section 33.1(c)(12) to include ''any person,'' we seek supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization. For example, we seek comment on whether Financial Group's proposed reporting requirement should be adopted, as proposed or modified. If commenters do not believe that Financial Group's proposal as to reporting requirements is appropriate, they should explain why

[1] 18 CFR 33.1(c)(12).

[2] *Blanket Authorizations Under FPA Section 203,* Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265 (2008), 124 FERC ¶ 61,048.

[3] 16 U.S.C. 824b(a)(1).

[4] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20.

[5] *See* Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20; *FPA Section 203 Supplemental Policy Statement,* 72 FR 42277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253, at P 58, n.48 (2007).

[6] 18 CFR 33.2(j)(1).

and propose alternative reporting requirements. We also seek comment as to whether reports should be filed with the Commission on a quarterly basis or on some other basis. We note that the expanded blanket authorization will not become effective until the Commission's order on reporting requirements becomes effective.

III. Information Collection Statement

9. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (information collections) imposed by agency rules.[7] Therefore, the Commission is submitting a proposed information collection to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[8] Here, the Commission has expanded a blanket authorization to additional entities under section 33.1(c)(12), and now requests supplemental comments on the scope and form of the reporting requirements for entities that transact under the expanded blanket authorization.

10. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Burden Estimate: The public reporting burden for the proposed reporting requirements and the records retention requirement is as follows.

Data collection FERC–519	Number of respondents	Number of responses	Hours per response	Total
Reporting	20	1	1	20
Total	20	1	1	20

Information Collection Costs: The Commission seeks comments on the cost to provide this information to the Commission. It has projected the average annualized cost of all respondents to be the following: 20 hours (reporting) @ $66 per hour = $1,320 for respondents. No capital costs are estimated to be incurred by respondents.

Title: FERC–519, ''Application Under the Federal Power Act, Section 203''.

Action: Revised Collection.

OMB Control No: 1902–0082.

The applicant will not be penalized for failure to respond to this information collection unless the information collection displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: This order requesting supplemental comments proposes codification of a limited reporting requirement for entities taking advantage of a blanket authorization under FPA section 203(a)(1), which in turn provides for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require applications seeking before-the-fact approval. The information will enable the Commission and the public to monitor transactions that occur under the 18 CFR 33.1(c)(12) blanket authorization, as extended in Order No. 708–A.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with the collection of information and assured itself, by means of internal review, that there is specific, objective support for its information burden estimate.

11. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax (202) 273–0873, e-mail: *michael.miller@ferc.gov*]. Comments on the requirements of the order requesting supplemental comment may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, fax (202) 395–7285, e-mail *oira_submission@omb.eop.gov*].

IV. Environmental Analysis

12. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[9] No environmental consideration is necessary for Commission action that involves information gathering, analysis, and dissemination.[10] This request for supplemental comments seeks comments on the scope and form of the reporting requirements under the expanded blanket authorization under section 33.1(c)(12). Consequently, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

13. The Regulatory Flexibility Act of 1980 (RFA)[11] generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. Most utilities to which this reporting requirement applies would not fall within the RFA's definition of small entity.[12] Consequently, the Commission certifies that this reporting requirement will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

14. 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

[7] 5 CFR 1320.12.

[8] 44 U.S.C. 3507(d).

[9] *Regulations Implementing National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[10] 18 CFR 380.4(a)(5).

[11] 5 U.S.C. 601–12.

[12] 5 U.S.C. 601(3), *citing* to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

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.

15. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

16. 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.*

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16868 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0648]

RIN 1625–AA09

Drawbridge Operation Regulation; Islais Creek, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulation for the Illinois Street drawbridge, mile 0.3, and the 3rd Street drawbridge, mile 0.4, over Islais Creek to open on signal if at least 72 hours notice is given. This action is proposed due to the minimal amount of vessels requiring drawbridge openings on the waterway.

DATES: Comments and related material must reach the Coast Guard on or before September 22, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0648 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516. 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–2008–0648), 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 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 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–2008–0648) 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 Commander (dpw), Eleventh Coast Guard District, Building 50–2, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 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

The Port of San Francisco (POSF) Illinois Street drawbridge, mile 0.3, over Islais Creek, in the City and County of San Francisco, CA, is required to open on signal per 33 CFR 117.5. The drawbridge provides 5 feet of vertical clearance for vessels above Mean High Water (MHW) in the closed-to-navigation position and unlimited vertical clearance when open.

The San Francisco Department of Public Works (SFDPW) 3rd Street

drawbridge, mile 0.4, over Islais Creek is required to open for vessels if at least one hour notice is given, per 33 CFR 117.163. The drawbridge provides 4 feet of vertical clearance above MHW.

Islais Creek is one mile in length from its mouth to its navigable terminus, an outfall culvert. It is located in an industrial section of southeast San Francisco with no marinas on the waterway. There have been no requests for openings of the 3rd Street drawbridge and no complaints from waterway users since construction of the Illinois Street drawbridge in 2003.

Due to infrequent calls for drawbridge openings, the POSF requested at least 72 hour notification. A 72 hour notification will allow the POSF to use personnel more efficiently and meet the reasonable needs of present navigation on the waterway.

Discussion of Proposed Rule

The proposed regulation would amend the Illinois Street drawbridge, mile 0.3, operation regulation from opening ''on signal'' to opening ''on signal, if at least 72 hours notice is given.'' The proposed regulation would amend the 3rd Street drawbridge, mile 0.4, operation regulation from opening ''on signal, if at least one hour notice is given'' to open ''on signal, if at least 72 hours notice is given.''

This amendment would maintain uniformity on the waterway and allow the bridge owners to manage their personnel more efficiently while meeting the reasonable needs of navigation.

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 Evaluation is unnecessary.

From 1990–2000, the existing 3rd Street drawbridge, mile 0.4, annually averaged 8 openings for State, Federal, and local vessels, 2.3 openings for recreational vessels, and 1.3 openings for tugs and barges. There has been an average of 15.8 lifts, including testing of the drawspan, per year from 1990 to 2000. There are no marinas on the waterway and none are currently planned. The last commercial vessel to request a drawspan opening did so to remove an abandoned vessel from Islais Creek. Economic impact to commercial vessels is expected to be minimal. Impacts to recreational vessels are also expected to be minimal.

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 action will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic on this waterway has been minimal since 1990. Recreational vessels that transit close to the shoreline, *i.e.* kayaks, canoes, and other personal water craft, can safely transit under these drawbridges at any time.

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 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516. 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 will 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 affect 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 guides 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 because it simply promulgates the operating regulations or procedures for drawbridges. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.163 to read as follows:

§ 117.163 Islais Creek (Channel).

(a) The draw of the Illinois Street Bridge, mile 0.3 at San Francisco, shall open on signal if at least 72 hours notice is given to the Port of San Francisco.

(b) The draw of the 3rd Street Bridge, mile 0.4 at San Francisco, shall open on signal if at least 72 hours notice is given to the San Francisco Department of Public Works.

Dated: July 10, 2008.

J. E. Long,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. E8–16896 Filed 7–23–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1100; FRL–8697–2]

Approval and Promulgation of Implementation Plans; Ohio; Removal of Vehicle Inspection and Maintenance Programs for Cincinnati and Dayton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation plan (SIP) revision submitted by the State of Ohio to allow the State to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas, also known as the E-Check program. The revision specifically requests that the E-Check program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati-Hamilton and Dayton-Springfield ozone maintenance plans. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on April 4, 2005, and supplemented it on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008. EPA is proposing to approve Ohio's request because the State has demonstrated that discontinuing the I/M program in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the fine particulate NAAQS or with the attainment and maintenance of other air quality standards.

DATES: Comments must be received on or before August 25, 2008.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–R05–OAR–2007–1100, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 353–6960.
4. *Mail:* John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John Mooney, Chief, Criteria Pollutant Section, (AR–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–2007–1100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the

comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

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 Should I Consider as I Prepare My Comments for EPA?
A. Submitting CBI
B. Tips for Preparing Your Comments
II. What Are EPA's Proposed Actions?
III. What Changes to the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?
IV. What Criteria Apply to Ohio's Request?
V. Has Ohio Met the Criteria for Converting the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas to Contingency Measures?
VI. What Are Our Conclusions Concerning the Removal of I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?
VII. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Are EPA's Proposed Actions?

EPA is proposing to approve a SIP revision submitted by the State of Ohio to modify the SIP such that the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas, also known as the E-Check program, is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

III. What Changes to the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?

Ohio EPA submitted a revision to the Cincinnati-Hamilton and Dayton-Springfield portions of the Ohio SIP on April 4, 2005. This revision requested that the Ohio I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati-Hamilton 1-Hour Ozone Maintenance Plan and the Dayton-Springfield 8-Hour Ozone Maintenance Plan.

The Cincinnati-Hamilton and Dayton-Springfield areas were required to implement ''basic'' I/M programs under section 182(b)(4) of the Act because they were originally designated as moderate 1-hour ozone nonattainment areas. In order to maximize nitrogen oxides (NO_X), volatile organic compound (VOC) and carbon monoxide (CO) emissions reductions from the I/M program, Ohio EPA chose to implement an ''enhanced'' program in those areas and incorporated an on-board diagnostic (OBD) component into the programs. EPA fully approved Ohio's I/M programs on April 4, 1995 (60 FR 16989). The E-Check programs began operation on January 2, 1996, to meet nonattainment area requirements for the ozone NAAQS effective at the time.[1] As noted in other portions of this action, both the Cincinnati-Hamilton and Dayton-Springfield areas have been redesignated to attainment for the 1-hour ozone standard and the Dayton-Springfield area has also been redesignated to attainment for the .08 ppm 8-hour ozone standard. The Cincinnati-Hamilton and Dayton-Springfield areas have approved maintenance plans for the 1-hour standard and the Dayton area has an approved maintenance plan for the .08 ppm 8-hour standard. Both of these maintenance plans show how the areas plan to maintain the standard without the need of emission reductions from E-Check.

The Cincinnati ozone nonattainment area also includes three counties (Boone, Campbell, and Kenton Counties) in Northern Kentucky. The discontinuation of the I/M program in these Kentucky counties was approved on October 4, 2005, at 70 FR 57750.

[1] Although the E-Check program began on January 1, 1996, there was a vehicle I/M program operating in the Cincinnati-Hamilton area prior to that date, and prior to November 15, 1990.

IV. What Criteria Apply to Ohio's Request?

Areas designated nonattainment for the ozone NAAQS and classified ''moderate'' are required by the Clean Air Act to implement vehicle I/M. See CAA section 182(b)(4).[2] These areas are no longer designated nonattainment for the 1-hour ozone standard. While Cincinnati-Hamilton is designated nonattainment for the .08 ppm 8-hour standard, it is not classified for that standard.[3] Thus, these areas are not currently subject to the I/M requirement based on their current nonattainment classifications under the CAA and the state may move them to the contingency measures portion of the SIP,[4] provided the state can satisfy the anti-backsliding requirements of the CAA (sections 110(l) and 193) and EPA's ozone implementation rule, 40 CFR 51.905.

CAA section 110(l) provides:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the Clean Air Act under section 110(l), EPA believes it is appropriate to allow States to substitute equivalent emissions reductions to compensate for the control measure being moved from the active portion of the SIP to the contingency measure portion of the SIP, as long as actual emissions in the air are not increased.

''Equivalent'' emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure to be removed from the active portion of the SIP. To show the compensating emissions reductions are equivalent, modeling or adequate justification must be provided. (EPA memorandum from John Calcagni, Director, Air Quality Management Division, to the Air Directors in EPA Regions 1–10, September 4, 1992, pages 10 and 13.) As stated in the notice proposing approval to remove I/M from the active measures of the Northern Kentucky SIP (70 FR 17029, 17033), the compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the termination of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

Section 193 of the Act provides in part that:

> No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

In addition, EPA adopted anti-backsliding requirements as part of the implementation rule for the .08 ppm 8-hour ozone standard. See 40 CFR 51.905. For areas, such as these, that were required under the Act to implement basic I/M, EPA applies the provisions of the implementation rule in concert with the provisions of 40 CFR 51.372(c).

The provisions of 40 CFR 51.372(c) allow certain areas seeking redesignation to submit only the authority for an I/M program (together with certain commitments), rather than an implemented program, in satisfaction of the applicable I/M requirements. Under these I/M rule provisions, a basic I/M area (i.e., was required to adopt a basic I/M program) which has been redesignated to attainment for the 1-hour ozone NAAQS can convert the I/M program to a contingency measure as part of the area's 1-hour ozone maintenance plan, notwithstanding the anti-backsliding provisions in EPA's 8-hour ozone implementation rule published April 30, 2004 (69 FR 23858). A basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, yet not required to have an I/M program based on its 8-hour ozone classification, continues to have the option to move its I/M program to a contingency measure pursuant to the provisions of 40 CFR 51.372(c), provided the 8-hour ozone nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any NAAQS or any other applicable Clean Air Act requirement pursuant to section 110(l) of the Act. For further details on the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas, please refer to the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, entitled ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.'' A copy of this memorandum may be obtained at *http://www.epa.gov/ttn/oarpg/t1pgm.html* under the file date ''5–12–04.''

V. Has Ohio Met the Criteria for Converting the I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas to Contingency Measures?

Both the Cincinnati-Hamilton area and the Dayton-Springfield area have been redesignated to attainment with respect to the 1-hour ozone NAAQS. The Cincinnati-Hamilton area was redesignated to attainment of the 1-hour ozone NAAQS on June 21, 2005 (70 FR 35946). The Dayton-Springfield area was redesignated to attainment of the 1-hour ozone NAAQS on May 5, 1995 (60 FR 22289). On August 13, 2007 (72 FR 45169), EPA approved the redesignation of the Dayton-Springfield area to attainment with respect to the 8-hour ozone NAAQS. EPA approved maintenance plans for each of these areas in connection with these redesignations. These approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period. In both cases, the conformity budget in the maintenance plans reflects mobile source emissions without E-Check, and the maintenance plans demonstrate that the applicable standard will continue to be met without E-Check. In accordance with the Act and EPA redesignation guidance, states are free to adjust control strategies in the maintenance plan as long as they can satisfy section 110(l). With such a demonstration of noninterference with attainment or other applicable requirements, control

[2] Certain areas classified ''marginal'' are also required to implement I/M. See CAA section 182(a)(2)(B).

[3] Cincinnati-Hamilton was classified ''basic'' (i.e., subject to subpart 1) for the .08 ppm 8-hour standard but that classification was vacated by a decision of the Court of Appeals for the D.C. Circuit. *See South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). EPA recently promulgated a .075 ppm 8-hour standard but no designations for that standard have been made.

[4] As discussed below, the measures must be retained as contingency measures because CAA section 175A requires that the contingency measures portion of the SIP include a requirement that the State will implement all measures that were part of the active SIP at the time the area was redesignated to attainment.

programs may be discontinued and removed from the SIP. However, section 175A(d) of the Act requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the E-Check program was in the SIP prior to redesignation to attainment for ozone, the E-Check program must be included in the contingency portion of the ozone maintenance plan as required by section 175A(d). As part of its submittal, Ohio EPA provided a demonstration showing continued maintenance of the 1-hour ozone standard without taking credit for reductions from the Cincinnati-Hamilton E-Check program, and continued maintenance of the 1-hour and 8-hour ozone standards without taking credit for reductions from the Dayton-Springfield E-Check program.

As discussed above, EPA interprets its regulations as allowing basic I/M areas such as these to have the option to move an I/M program to a contingency measure pursuant to 40 CFR 51.372(c), provided that moving I/M to contingency measures will not interfere with the area's ability to comply with any NAAQS or any other applicable CAA requirement (including section 193). Under 40 CFR 51.372(c), an area is required to include in its submittal, with a request to place the I/M program into the contingency measures: (1) Legal authority to implement a basic I/M program; (2) a commitment by the Governor of the State, of the Governor's designee, to adopt or consider adopting regulations to implement an I/M program to correct a violation of the ozone or carbon monoxide standard, in accordance with the maintenance plan; and (3) a contingency commitment that includes an enforceable schedule, with appropriate milestones, for adoption and implementation of an I/M program.

In the State's supplemental submittal of February 19, 2008, Ohio EPA states that Ohio has retained the necessary legal authority to implement I/M under Ohio Revised Code 3704.14(E). EPA examined the applicable Ohio statutory language and concurs with Ohio's finding that the State has the necessary legal authority to implement I/M if it becomes necessary under the Clean Air Act to implement I/M as a contingency measure. In addition, the State's supplemental submittal includes a commitment by Ohio EPA to consider the adoption of E-Check as a corrective measure should an ambient 1-hour ozone design value trigger a contingency measure in the Cincinnati-Hamilton and Dayton-Springfield areas, and the required program was determined by the State to be an I/M program. The submittal also contains an I/M implementation schedule in the event that I/M is selected by the State as a corrective measure as required by 40 CFR 51.372(c).

Section 110(l) of the Clean Air Act dictates that EPA ''shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement''. The discontinuation of E-Check will allow greater emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X) from certain sources than would continuation of the programs. As discussed above, EPA interprets section 110(l) to require a demonstration that the discontinuation of E-Check would not interfere with timely attainment or with meeting other applicable requirements, and areas may satisfy this requirement by adopting emissions reductions which are equal to or greater than the emissions increases, as well as being contemporaneous, permanent, enforceable, quantifiable, and surplus.

In this case, the most significant relevant requirement is timely attainment of the ozone air quality standard. Ohio has adopted several measures that achieve equivalent, contemporaneous, permanent, enforceable, quantifiable and surplus reductions to assure that the discontinuation of E-Check, which occurred starting January 1, 2006, will not interfere with timely attainment of the ozone air quality standard. The emission reductions from Ohio's replacement measures that are discussed in more detail below have been made permanent through Ohio's rulemaking process. All the replacement measures are currently in effect and establish obligatory requirements applicable to affected groups. The emission reductions are enforceable by the State of Ohio as of the State effective date of these regulations and they are all Federally enforceable by EPA since all the replacement measures have been approved into the Ohio SIP. In addition, the emission reductions from the State's replacement measures are considered surplus because they go beyond the reductions previously required in the Ohio SIP. While ''contemporaneous'' is not explicitly defined in the Clean Air Act, a reasonable interpretation is that the compensating, equivalent emissions reductions should be in place within one year (prior to or following) the cessation of the substituted control measure. Toward that end, Ohio adopted various measures to reduce VOC emissions by the start of the 2006 ozone season, including a rule requiring use of lower emitting solvents in cold cleaner degreasers, a rule requiring the use of more efficient paint application techniques for auto refinishing, and a rule requiring that portable fuel containers be designed for less volatilization and fuel spillage. EPA approved these rules on March 30, 2007, at 72 FR 15045.

In addition, Ohio adopted a rule requiring use of low volatility gasoline in the Cincinnati-Hamilton and Dayton-Springfield areas beginning on June 1, 2006. However, in response to a lawsuit challenging the rule, as well as a survey conducted by EPA of gasoline suppliers in the Cincinnati and Dayton areas determining that there was not enough low volatility gasoline to supply the areas during the 2006 ozone season, Ohio adopted amended rules to modify the implementation date for the required use of low volatility gasoline to be one year after the approval by EPA of a fuel waiver under CAA section 211(c)(4)(C). Since low volatility gasoline was no longer able to be implemented in 2006, Ohio adopted a further rule to provide the necessary reductions in 2006. This further rule retired 240 allowances from the new source set aside for the ''NO_X SIP Call'' trading program, creating a surplus reduction for ozone season 2006 of 240 tons of NO_X emissions. Implementation of low volatility gasoline was delayed further by enactment of the Energy Policy Act of 2005, which imposed new requirements on the EPA's approval of state fuel programs. EPA approved Ohio's low vapor pressure gasoline rule on May 25, 2007, at 72 FR 29269. Thus, given Ohio's adoption of a one year delay between approval and implementation, low RVP gasoline was implemented starting at the beginning of the 2008 ozone season.

Ohio's supplemental submittal of February 19, 2008, summarizes its estimates of the emission increases resulting from discontinuing E-Check, and of the emission reductions from the various replacement measures that they have adopted. Ohio provided separate estimates for Cincinnati-Hamilton and for Dayton-Springfield, and addressed both VOC and NO_X. Ohio provided these estimates for 2006.

For the Cincinnati-Hamilton area, Ohio estimated that the discontinuation of E-Check would result in an increase of 5.2 tons per day of VOC emissions and 4.4 tons per day of NO_X emissions. Based on modeling using MOBILE6 (EPA's mobile source emission factor model), Ohio estimated that the use of low volatility gasoline would reduce VOC emissions by 4.60 tons per day and

would reduce NO_X emissions by 0.19 tons per day. Ohio estimated that its regulation on cold solvent degreasing would reduce VOC emissions by 2.57 tons per day, and Ohio estimated that its regulation on auto refinishing would reduce VOC emissions by 0.44 tons per day.

Ohio's rule retiring 240 allowances from the ''NO_X SIP Call'' trading program serves to create a surplus reduction of 240 tons of NO_X. As set forth in the rulemaking approving the retirement of the allowances [73 FR 8197], EPA believes that these reductions can be associated with a portion of the substantial emission reductions that have occurred in the Cincinnati-Hamilton and Dayton-Springfield areas. (The remainder of the reductions would be attributed to the NO_X SIP Call.)

The measures Ohio adopted do not fully compensate for the increase in NO_X emissions expected to result from discontinuation of E-Check. On the other hand, the adopted measures provide VOC emission reductions that more than compensate for the expected increase attributable to the discontinuation of E-Check. Ohio seeks for EPA to find that the extra VOC reductions will compensate for the effect on ozone levels of the otherwise uncompensated portion of the increase in NO_X emissions expected to result from the discontinuation of E-Check.

EPA addresses the relationship between VOC and NO_X emissions in its guidance on reasonable further progress. This guidance provides for states to assume, as an approximation, that equivalent percent changes in the area's inventory for the respective pollutant would yield an equivalent change in ozone levels; e.g., decreasing area NO_X emissions by 3 percent would have the same effect as decreasing area VOC emissions by 3 percent. Stated another way, if an area has twice as many tons of NO_X emissions as of VOC emissions, then 2 tons of NO_X emissions would be assumed to have the same effect on ozone as 1 ton of VOC emissions. Ohio applied this approach to assess whether the reductions in VOC emissions are sufficient to compensate not only for the VOC emissions increase from discontinuing E-Check but also for the otherwise uncompensated portion of the NO_X emissions increase from discontinuing E-Check.

According to Ohio's emission estimates, the number of tons of NO_X emissions in the Cincinnati-Hamilton area is 1.96 times the number of tons of VOC emissions in the area. As noted above, the NO_X emission increase expected to result from discontinuation of E-Check in the Cincinnati-Hamilton area is 4.4 tons per day. Ohio estimated that low volatility gasoline will compensate for 0.19 tons per day. The remaining 4.21 tons per day of NO_X emissions may be estimated to be equivalent to 2.15 tons per day of VOC. Thus, for this approach to substitution, for the Cincinnati-Hamilton area, Ohio would need to provide 5.2 tons per day of VOC emission reduction to compensate for the VOC emissions impact of discontinuing E-Check and 2.15 tons per day of VOC emission to compensate for the otherwise uncompensated portion of the NO_X emission impact of discontinuing E-Check, for a total of 7.35 tons per day. The total reductions that Ohio's measures provide are 7.61 tons per day. Thus, Ohio has demonstrated that it has provided emission reductions that with respect to ozone have more than compensated for the emission increases expected to result from the discontinuation of E-Check.

Ohio provided emission estimates for 2006. EPA believes that 2006 represents a worst case scenario. As the vehicle fleet becomes cleaner over time, the impact of discontinuing E-Check will decline. On the other hand, the emission reductions that Ohio's measures provide can be expected to remain relatively constant and even to increase gradually as source growth occurs. Therefore, EPA concludes that the combination of discontinuing E-Check and use of low volatility gasoline and the other control measures Ohio adopted will result in total emissions levels which will not interfere with attainment of the ozone standard.

Ohio found similar results for the Dayton-Springfield area. Ohio estimated that the discontinuation of E-Check in the Dayton-Springfield area would increase VOC emissions by 1.89 tons per day and NO_X emissions by 1.7 tons per day. Ohio estimated that use of low volatility gasoline would reduce Dayton-Springfield area emissions of VOC by 4.20 tons per day and of NO_X by 0.20 tons per day. Ohio estimated that its rule regarding cold solvent degreasing would reduce Dayton-Springfield area VOC emissions by 1.75 tons per day, and Ohio estimated that its rule regarding auto refinishing would reduce Dayton-Springfield area VOC emissions by 0.30 tons per day. Thus the measures adopted by Ohio provide for a total of 6.25 tons per day of VOC emission decrease and 0.20 tons per day of NO_X emission decrease.

According to Ohio's emissions estimates, the number of tons of NO_X emitted in the Dayton-Springfield area is 0.62 times the number of tons of VOC emitted in the area. Thus, 1.5 tons per day of NO_X emissions (1.7 minus 0.2) would be considered equivalent to 2.43 tons per day of VOC. Thus, under Ohio's approach, the total necessary VOC emission reduction in the Dayton-Springfield area would be 1.89 plus 2.43 or 4.32 tons per day. Ohio provides substantially more reduction than this target. Thus, for the Dayton-Springfield area, like for the Cincinnati-Hamilton area, Ohio has provided sufficient compensating emission reductions for EPA to conclude that the discontinuation of E-Check in combination with the various measures Ohio has adopted will not interfere with attainment of the ozone standard.

In addition, on August 13, 2007, at 72 FR 45169, EPA concluded that Dayton-Springfield is meeting the .08 ppm ozone air quality standard and redesignated this area to attainment for that standard. The maintenance plan for this area shows that the area will continue to attain the standard even with the discontinuation of E-Check. This provides further support for the argument that discontinuing E-Check will not interfere with attainment of the ozone standard in the Dayton-Springfield area.

EPA must also consider whether the discontinuation of E-Check would interfere with timely attainment of the fine particulate matter ($PM_{2.5}$) air quality standard. Ohio addressed $PM_{2.5}$ by providing modeling evidence that the Cincinnati and Dayton areas will achieve timely attainment of the $PM_{2.5}$ standards. The modeling uses the Comprehensive Air Model with Extensions (CAM_X) and simulates emissions and $PM_{2.5}$ concentrations across much of the Eastern United States. Model simulations were performed for a base year of 2005 and a projection year of 2009. The base year simulations were performed to assess model performance, i.e., to assess whether the model provides adequately accurate and unbiased estimates of the concentrations of the various $PM_{2.5}$ components. The projection year simulations provided information on the reductions in concentrations of the various $PM_{2.5}$ components that can be expected to result from various anticipated emission reductions. Concentration estimates for 2009 were then derived by using the model results in a relative sense, determining a 2009 concentration for each $PM_{2.5}$ component by multiplying the base year concentration times the ratio of the model estimates for 2009 versus for the base year, and then summing these 2009 component concentration estimates to

obtain a total projected 2009 $PM_{2.5}$ concentration.

The baseline concentrations used in the modeling reflect data from 2003 to 2007. In accordance with recommendations in EPA's modeling guidance (''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze''), quarterly mean concentrations of $PM_{2.5}$ were determined by first averaging concentrations for 2003 to 2005, 2004 to 2005, and 2005 to 2007, and then averaging these three three-year averages. The analysis also used measurements of various species in order to determine the composition of the $PM_{2.5}$ for each of the four seasons of the year. The components addressed include ammonium sulfate, ammonium nitrate, organic particles, elemental carbon, other inorganic particulate matter, and particle bound water. The analysis of composition includes adjustments of the species measurements so as better to reflect the quantity of the species that would be captured by the Federal Reference Method (FRM). As two examples, the nitrate measurements were adjusted to reflect volatilization of nitrates off FRM monitors, and the measurements of the carbon portion of organic particles were adjusted to add the non-carbon components of these particles. These seasonal compositions were then applied to the quarterly weighted average $PM_{2.5}$ component concentrations to derive quarterly weighted average component concentrations.

The next step in the analysis was to use modeling to determine the degree to which concentrations are expected to be reduced between the baseline period and 2009. For each quarter for each $PM_{2.5}$ component, for each monitoring location, a relative response factor was computed, representing the ratio of the 2009 model estimate to the base year model estimate.

The final step in the analysis was to multiply the relative response factor for each component times that component's weighted average baseline concentration. This multiplication yields an estimate of the concentration of the component in 2009. The sum of these projected component concentrations represents the estimated 2009 concentration of $PM_{2.5}$. An estimated 2009 $PM_{2.5}$ concentration of 15.0 micrograms per cubic meter ($\mu g/m^3$) represents a projection of attainment by that date.

In the Cincinnati area, the monitors with the highest average concentrations of $PM_{2.5}$ are at the St. Bernard site in Hamilton County (site number 39–061–8001) and at the Middletown site in Butler County (site number 39–017–0003). The baseline, 5-year weighted average $PM_{2.5}$ concentrations at these sites were 17.6 and 16.2 $\mu g/m^3$, respectively. The projected 2009 $PM_{2.5}$ concentrations at these sites were 14.7 and 13.5 $\mu g/m^3$, respectively. In the Dayton area, the monitor with the highest average concentration is at 215 East Third Street (site number 39–113–0032). For this site, the baseline average concentration was 15.5 $\mu g/m^3$, and the projected 2009 concentration was 13.2 $\mu g/m^3$. Projected concentrations at other sites in these areas were lower. Thus, Ohio has projected that both areas will attain the standard by 2009, which would be timely (since the area was designated in 2005).

This modeling analysis was based on an emissions inventory that reflected no operation of E-Check in the Cincinnati and Dayton areas. Consequently, the modeling indicates that these areas will attain the standard by 2009 notwithstanding the discontinuation of E-Check in these areas. EPA believes, based on Ohio's modeling analysis, that discontinuation of E-Check in these areas will not interfere with timely attainment of the $PM_{2.5}$ standard in these areas.

EPA also notes that for the reasons stated in EPA's rulemaking concerning I/M for the Kentucky counties that are part of the Cincinnati-Hamilton nonattainment area for ozone and $PM_{2.5}$, the measures providing equivalent emissions reductions, described in detail above for ozone, should also provide equivalent emission reductions for $PM_{2.5}$. See 70 FR 17029, 17035 (April 4, 2005) (EPA's proposed approval of request to move I/M from the active measures to contingency measures of the Northern Kentucky SIP).

Ohio was required, pursuant to Sections 172(b) and 172(c) of the Clean Air Act, to submit a plan by April 2008 that provides for timely attainment of the $PM_{2.5}$ standard. EPA expects that Ohio will make a separate submittal to address this requirement. Although EPA expects that submittal to include a modeling analysis that is very similar to the modeling discussed here, EPA expects that the future submittal will provide weight-of-evidence analyses to assess whether other types of evidence corroborate these modeling results. EPA also expects that Ohio will hold a public hearing to obtain any public comments on this modeling. Therefore, EPA is not rulemaking here on whether Ohio has satisfied the requirement for a plan providing for timely attainment. Today's action uses these modeling results only to address the issue of whether discontinuation of E-Check will interfere with timely attainment of the $PM_{2.5}$ standards.

EPA believes that discontinuation of E-Check will clearly not interfere with Ohio meeting other Clean Air Act requirements. Discontinuation of E-Check will not cause any increase in emissions of sulfur dioxide or lead, and any impact on emissions of carbon monoxide is expected to be relatively small. Furthermore, the concentrations of these pollutants and for nitrogen dioxide in the Cincinnati and Dayton areas are less than half of the applicable air quality standards. Therefore, discontinuation of E-Check will not interfere with attainment of any of these air quality standards. The rationale for finding noninterference with timely attainment also supports finding that the revisions will not interfere with achievement of reasonable further progress toward attainment. Other requirements such as for reasonably available control technology are not affected by whether E-Check is in place. Therefore, EPA believes that the combination of actions requested by Ohio, including discontinuation of E-Check and adoption of control measures such as reducing gasoline volatility, will not interfere with Ohio meeting applicable requirements.

Section 193 of the Act applies to the removal of the I/M program in the Cincinnati-Hamilton nonattainment area. For the reasons described above, however, EPA believes that Ohio has adopted equivalent, offsetting reductions which satisfy section 193.

VI. What Are Our Conclusions Concerning the Removal of I/M Programs in the Cincinnati-Hamilton and Dayton-Springfield Areas?

We are proposing to find that the State has demonstrated that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are proposing further to approve Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

As noted above, the Cincinnati area is currently designated nonattainment for ozone but is not classified. Pursuant to a decision of the Court of Appeals for the District of Columbia Circuit in the

case of *South Coast Air Quality Management Dist.* v. *EPA* (472 F.3d 882 (D.C. Cir. 2006)), EPA will be reevaluating the classification of ozone nonattainment areas that were formerly classified as ''basic'' (*i.e.* under subpart 1) for the .08 ppm standard. One possible outcome could be the reestablishment of a requirement for I/M for the Cincinnati area.[5] However, for the reasons stated above, EPA believes that Ohio has satisfied currently applicable criteria for discontinuing I/M in the Cincinnati and Dayton areas.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: July 16, 2008.

Walter W. Kovalick Jr,

Acting Regional Administrator, Region 5.

[FR Doc. E8–16987 Filed 7–23–08; 8:45 am]

BILLING CODE 6560–50–P

[5] Because the Dayton area is designated attainment for the 0.08 ppm 8-hour ozone standard, EPA's future classification rule for that standard would not aply to that area.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0537; FRL–8697–5]

Revisions to the California State Implementation Plan, Approval of the South Coast Air Quality Management District—Reasonably Available Control Technology Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern the District's analysis of whether its rules meet Reasonably Available Control Technology (RACT) under the 8-hour ozone National Ambient Air Quality Standard (NAAQS). We are approving the analysis under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 25, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0537, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov*.
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail.

Www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What document did the State submit?

Table 1 lists the document addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1.—SUBMITTED DOCUMENT

Local agency	Document	Adopted	Submitted
SCAQMD	Reasonably Available Control Technology Analysis	07/14/06	01/31/07

This submittal became complete by operation of law on July 31, 2007.

B. Are there other versions of this document?

There is no previous version of this document in the SIP.

C. What is the purpose of the submitted RACT SIP analysis?

VOCs and NO_X help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC and NO_X emissions. Section 172(c)(1) and 182 require areas that are designated at moderate or above for ozone non-attainment to adopt RACT. The SCAQMD falls under this requirement as it is designated as a severe ozone non-attainment area under the 8-hour NAAQS for ozone (40 CFR 81.305). Therefore, the SCAQMD must, at a minimum, adopt RACT level controls for sources covered by a Control Technique Guidelines (CTG) document and for any major non-CTG source. Section IV.G. of EPA's final rule to implement the 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) discusses RACT requirements. It states in part that where a RACT SIP is required, State SIPs implementing the 8-hour standard generally must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour implementation purposes or through a new RACT determination. The submitted document provides SCAQMD's analysis of why their rules meet RACT for the 8-hour NAAQS for ozone. EPA's technical support document (TSD) has more information about SCAQMD's RACT analysis.

II. EPA's Evaluation and Action

A. How is EPA evaluating the RACT SIP analysis?

Guidance and policy documents that we use to help evaluate whether the analysis fulfills RACT include the following:

1. Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (70 FR 71612; November 29, 2005).
2. Letter from William T. Harnett to Regional Air Division Directors, (May 18, 2006), ''RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers''.
3. State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498; April 16, 1992).
4. RACT SIPs, Letter dated March 9, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) describing Region IX's understanding of what constitutes a minimally acceptable RACT SIP.
5. RACT SIPs, Letter dated April 4, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) listing EPA's current CTGs, ACTs, and other documents which may help to establish RACT.
6. Comment letter dated June 28, 2006 from EPA Region IX (Andrew Steckel) to SCAQMD (Joe Cassmassi) on the 8-hour Ozone Reasonably Available Control Technology—State Implementation Plan (RACT SIP) Analysis, draft staff report dated May 2006.

B. Does the analysis meet the evaluation criteria?

SCAQMD's staff report included a listing of all CTG source categories and cross matched those CTG categories against the corresponding District rule which implemented RACT. Given its designation as a severe ozone non-attainment area, SCAQMD was also required to analyze RACT for all sources that emit or have the potential to emit at least 25 tons per year (tpy) of VOC or NO_X. SCAQMD staff searched their permitting database for all facilities that emitted at least 10 tpy of VOC or NO_X and identified approximately 1,311 such facilities. The staff report states these facilities have a total of 17,607 permits. SCAQMD's staff report provides a listing of the Title V facilities along with an example of how each permitted source in a Title V facility is associated with a district rule and then those rules are compared to the applicable CTGs and ACTs. SCAQMD's RACT SIP analysis was made available for public comment prior to being adopted by the District. No public comments were received by the SCAQMD during the public workshop or during their 45-day comment period. We propose to find that the RACT SIP analysis performed by the SCAQMD is reasonable and demonstrates their rules meet RACT. We also propose to find that the analysis is consistent with the CAA, EPA regulations and the relevant policy and guidance documents listed above. The TSD has more information on our evaluation.

C. EPA Recommendation To Strengthen the SIP

The TSD describes recommendations for strengthening the SCAQMD SIP by amending and submitting Rules 1146.1 and 1110.2. SCAQMD's amendments to Rule 1146.1, ''Emissions of NO_X from Small Industrial, Institutional, and Commercial Boilers'', are planned for a Board hearing in the fall of 2008. We believe the emission limits in the existing SIP-approved Rule 1146.1 meets RACT and the anticipated amendments will further strengthen it. Rule 1110.2, ''Emissions from Gaseous and Liquid Fueled Internal Combustion Engines'', was amended on February 1, 2008. In a separate action, Rule 1110.2 will be proposed for approval into the SIP.

D. Public Comment and Final Action

Because EPA believes the submitted analysis fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this document into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a

SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 3, 2008.

Kathleen H. Johnson,

Acting Regional Administrator, Region IX.

[FR Doc. E8–16980 Filed 7–23–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1588; MB Docket No. 08–133; RM–11465]

Television Broadcasting Services; Greenville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Esteem Broadcasting of North Carolina, LLC (''Esteem''), licensee of WYDO–DT, DTV channel 14, Greenville, North Carolina. Esteem requests the substitution of DTV channel 47 for channel 14 at Greenville.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Howard M. Liberman, Esq., Drinker Biddle & Reath, LLP, 1500 K Street, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 08–133, adopted July 1, 2008, and released July 3, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under North Carolina, is amended by substituting channel 47 for channel 14 at Greenville.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16846 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1652; MB Docket No. 08–141; RM–11471]

Television Broadcasting Services; Rio Grande City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Sunbelt Multimedia Co. (''Sunbelt''), the licensee of KTLM–DT, DTV channel 20, Rio Grande City, Texas. Sunbelt requests the substitution of DTV channel 40 for channel 20 at Rio Grande City.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Barry A. Friedman, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 08–141, adopted July 9, 2008, and released July 14, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Texas, is amended by substituting channel 40 for channel 20 at Rio Grande City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16965 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1492; MB Docket No. 08–121; RM–11449]

Television Broadcasting Services; La Grande, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Fisher Radio Regional Group, Inc. (''Fisher''), the licensee of KUNP–DT, DTV channel 29, La Grande, Oregon. Fisher requests the substitution of DTV channel 16 for channel 29 at La Grande.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Clifford M. Harrington, Esq., Pillsbury, Winthrop, Shaw Pittman, LLP, 2300 N Street, NW., Washington, DC 20037–1128.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–121, adopted July 14, 2008, and released July 15, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain

proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Oregon, is amended by substituting channel 16 for channel 29 at La Grande.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16967 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1497; MB Docket No. 08–105; RM–11444]

Television Broadcasting Services; Huntsville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by WAFF License Subsidiary, LLC (''WTVM''), the licensee of WAFF–DT, DTV channel 49, Huntsville, Alabama. WTVM requests the substitution of DTV channel 48 for channel 49 at Huntsville.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Jennifer A. Johnson, Esq., Covington & Burlington, LLP, 1201 Pennsylvania Avenue, NW., Washington, DC.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–105, adopted July 14, 2008, and released July 15, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Alabama, is amended by substituting channel 48 for channel 49 at Huntsville.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16969 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1692; MB Docket No. 08–144; RM–11472]

Television Broadcasting Services; Salt Lake City, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Foxco Acquisition Sub, LLC (''Foxco''), the permittee of KSTU–DT, DTV channel 13, Salt Lake City, Utah. Foxco requests the substitution of DTV channel 28 for channel 13 at Salt Lake City.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Antoinette C. Bush, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–144, adopted July 10, 2008, and released July 18, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Utah, is amended by substituting channel 28 for channel 13 at Salt Lake City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16971 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1599; MB Docket No. 08–135; RM–11467]

Television Broadcasting Services; Freeport, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Gray Television Licensee, Inc. (''Gray''), the licensee of WIFR–DT, DTV channel 41, Freeport, Illinois. The station's post-transition DTV channel is its analog channel, channel 23. Gray requests the substitution of DTV channel 41 for channel 23 at Freeport.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: James R. Bayes, Esq., Wiley Rein LLP, 1776 K Street, NW., Washington, DC 20036–7322.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–135, adopted July 1, 2008, and released July 8, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Illinois, is amended by substituting channel 41 for channel 23 at Freeport.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16847 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1600; MB Docket No. 08–136; RM–11468]

Television Broadcasting Services; Wittenberg, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Davis Television Wausau, LLC (''Davis''), the licensee of WFXS(TV), DTV channel 50, Wittenberg, Wisconsin. Davis requests the substitution of DTV channel 31 for channel 50 at Wittenberg.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: John D. Poutasse, Esq., Leventhal Senter & Lerman PLLC, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–136, adopted July 1, 2008, and released July 8, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Wisconsin, is amended by substituting channel 31 for channel 50 at Wittenberg.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16848 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1500; MB Docket No. 08–122; RM–11440]

Television Broadcasting Services; Indianapolis, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by LeSEA Broadcasting of Indianapolis, Inc. (''LeSEA''), the licensee of WHMB–DT, DTV channel 16, Indianapolis, Indiana. LeSEA requests the substitution of DTV channel 20 for channel 16 at Indianapolis.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph C. Chautin, III, Esq., Hardy, Carey, Chautin & Balkin, L.L.P., 1080 West Causeway Approach, Mandeville, Louisiana 70471–3036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–122, adopted June 30, 2008, and released July 9, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th

Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Indiana, is amended by substituting channel 20 for channel 16 at Indianapolis.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16849 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1624; MB Docket No. 08–108; RM–11451]

Television Broadcasting Services; Casper, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Central Wyoming College (''CWC''), the licensee of KPTW(TV), channel *6, Casper, Wyoming. CWC holds a construction permit for a digital facility on DTV channel *6, and requests the substitution of DTV channel *8 for DTV channel *6 at Casper.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Ann Goodwin Crump, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–1624, adopted July 7, 2008, and released July 9, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Wyoming, is amended by substituting channel *8 for channel *6 at Casper.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16852 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1486; MB Docket No. 08–112; RM–11456]

Television Broadcasting Services; Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Estes Broadcasting, Inc. (''Estes''), the permittee of KCEB–DT, DTV channel 38, Longview, Texas. Estes requests the substitution of DTV channel 51 for channel 38 at Longview.

DATES: Comments must be filed on or before August 25, 2008, and reply comments on or before September 8, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Howard M. Weiss, Esq., Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, VA 22209.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–112, adopted July 15, 2008, and released July 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Texas, is amended by substituting channel 51 for channel 38 at Longview.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–16995 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 08–90; FCC 08–155]

Sponsorship Identification Rules and Embedded Advertising

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on proposed rule changes to make sponsorship identification disclosures more obvious to consumers. The Commission specifically seeks comment on current trends in embedded advertising and potential changes to the current sponsorship identification regulations with regard to embedded advertising.

DATES: Comments for this proceeding are due on or before September 22, 2008; reply comments are due on or before October 22, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 08–90, 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: For additional information on this proceeding, contact John Norton, *John.Norton@fcc.gov,* or Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM),* FCC 08–155, adopted on June 13, 2008, and released on June 26, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the

Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice of Inquiry and Notice of Proposed Rulemaking

I. Introduction

1. We solicit comment on the relationship between the Commission's sponsorship identification rules and increasing industry reliance on embedded advertising techniques. Due, in part, to recent technological changes that allow consumers to more readily bypass commercial content, content providers may be turning to more subtle and sophisticated means of incorporating commercial messages into traditional programming. As these techniques become increasingly prevalent, it is important that the sponsorship identification rules protect the public's right to know who is paying to air commercials or other program matter on broadcast television and radio and cable. Accordingly, we seek comment on current trends in embedded advertising and potential changes to the current sponsorship identification regulations with regard to embedded advertising.

II. Notice of Inquiry

2. Product placement is the practice of inserting ''branded products into programming in exchange for fees or other consideration.'' The Writers Guild and others have made a distinction between the mere use of products as props in television programming and the integration of the product into the plot of the story. Product placement is the placement of commercial products as props in television programming, whereas product integration integrates the product into the dialogue and/or plot of a program. The purpose of embedded advertising, such as product placement and product integration, is to draw on a program's credibility in order to promote a commercial product by weaving the product into the program. The use of embedded advertising is escalating as advertisers respond to a changing industry. Digital recording devices (DVRs) allow consumers to skip traditional commercials, giving rise to interest in other means of promoting products and services. In addition, concerns have been raised that the availability of more programming options may translate into lower audience retention during commercial breaks. The industry appears to be turning increasingly to embedded advertising techniques. PQ Media estimates that between 1999 and 2004, the amount of money spent on television product placement increased an average of 21.5 percent per year. For 2005, PQ Media estimates that the net value of the overall paid product placement market in the United States increased 48.7 percent to $1.50 billion. Product placements for primetime network programming, according to Nielsen's Product Placement Services, decreased in 2006, but the first quarter of 2007 shows an increase in product placements in Nielsen's Top 10 shows.

3. These trends are also reflected in the new types of advertising offered by certain networks and radio stations. The CW network, for example, offers ''content wraps,'' serialized stories within a group of commercials that include product integration, and ''cwikies,'' five second advertising slots interspersed in regular programming. Fox Sports Network claims a specialty in ''product immersion,'' the practice of ''immersing products into programs * * * so that they really feel like it is part of the show.'' NBC has instituted a policy of bringing in advertisers during programming development. In 2004, Universal Television Networks sold to OMD Worldwide the exclusive rights to product placement position in a miniseries. The goal of many of these new marketing techniques is to integrate products and services seamlessly into traditional programming.

4. The Commission's sponsorship identification rules are based on Sections 317 and 507 of the Communications Act of 1934, as amended (''Communications Act''), and are designed to protect the public's right to know the identity of the sponsor when consideration has been provided in exchange for airing programming. Section 317 generally requires broadcast licensees to make sponsorship identification announcements in any programming for which consideration has been received. Section 317(c) requires broadcasters to ''exercise reasonable diligence'' in obtaining sponsorship information from any person with whom the licensee ''deals directly.'' Section 507 of the Communications Act establishes a reporting scheme designed to ensure that broadcast licensees receive notice of consideration that may have been provided or promised in exchange for the inclusion of matter in a program regardless of where in the production chain the exchange takes place.

5. Sections 73.1212 and 76.1615 of the Commission's rules closely track the language of Section 317 of the Communications Act. The rules apply regardless of whether the program is primarily commercial or noncommercial and regardless of the duration of the programming. The rules do not require sponsorship identification, however, when both the identity of the sponsor and the fact of sponsorship of a commercial product or service is obvious. Thus, a sponsorship announcement would not be required when there is a clear connection between an obviously commercial product and sponsor. Furthermore, with the exception of sponsored political advertising and certain issue advertising, the Commission only requires that the announcement occur once during the programming and remain on the screen long enough to be read or heard by an average viewer. Other decisions are left to the ''reasonable, good faith judgment'' of the licensee. The Commission has issued numerous public notices over the years reminding industry participants of their sponsorship identification obligations. In the past, the Commission has specifically reminded the industry that such obligations extend to ''hidden'' commercials embedded in interview programs.

6. Providing ''special safeguards'' against the effects of overcommercialization on children, the Children's Television Act imposes time limitations on the amount of commercial matter in children's programming. The Commission also has several longstanding policies that are designed to protect children from confusion that may result from the intermixture of program and commercial material in children's television programming. The Commission requires broadcasters to use separations or ''bumpers'' between programming and commercials during children's programming to help children distinguish between advertisements and program content. The Commission also considers any children's programming associated with a product, in which commercials for that product are aired, to be a ''program-length commercial.'' Such program length commercials may exceed the Commission's time limits on commercial matter in children's programming and expose the station to enforcement action. The Commission has also stated that this program-length commercial policy applies to ''programs in which a product or service is advertised within the body of the program and not separated from program content as children's commercials are required to be.''

7. In a petition for rulemaking filed with the Commission in 2003, Commercial Alert argues that the Commission's sponsorship

identification rules are inadequate to address embedded advertising techniques, and thus, these rules fail to fulfill the Commission's mandate under Section 317 of the Communications Act. For example, Commercial Alert asserts that ''[t]here was a statement at the end of a segment featuring the product placement that [the television program] 'Big Brother 4 is sponsored by McDonald's.' But there was not a hint that embedded plugs within the show were in fact paid ads.'' Commercial Alert requests revision to these rules to require disclosure of product placement and integration in entertainment programming at the beginnings of programs in clear and conspicuous language. Commercial Alert also requests that disclosure be made concurrently with any product placement and/or integration, asserting that requiring disclosure only at the beginning or the end of the program disadvantages viewers who might miss the announcement.

8. In opposition, the Washington Legal Foundation (WLF) and Freedom to Advertise Coalition (FAC) both argue that embedded advertising techniques are a longstanding fixture of broadcast advertising that cause no substantial harm to consumers, that the Commission's existing sponsorship identification rules are adequate to regulate them, and that a concurrent disclosure requirement would violate the First Amendment. WLF argues that the proposed concurrent disclosure would so greatly interfere with programming that it would be paramount to a governmental ban on product placement. By interfering with both the ''commercial and dramatic reality of television production,'' asserts WLF, a concurrent disclosure requirement would be unconstitutionally overbroad. Similarly, FAC argues that a concurrent disclosure requirement would so greatly interfere with the ''artistic integrity'' of a program that it would ''censor or ban this long standing means of commercial speech.'' FAC also asserts that a concurrent disclosure requirement lacks a ''strong enough governmental interest'' to justify the infringement on commercial speech. Accordingly, applying the four-part test developed by the U.S. Supreme Court in *Central Hudson Gas and Electric Corp.* v. *Public Service Commission*, 447 U.S. 557, (1980), FAC asserts that any concurrent disclosure requirement would fail to meet the intermediate standard of review developed for lawful, non-deceptive commercial speech.

9. Two years after the filing of the Commercial Alert Petition, the Writer's Guild of America, West; the Writer's Guild of America, East; the Screen Actors Guild; and the associate dean of the U.S.C. Annenberg School for Communication formulated another set of recommendations, including: (1) Visual and aural disclosure of product integration at the beginning of each program; (2) strict limits on product integration in children's programming; (3) input by storytellers, actors, and directors, arrived at through collective bargaining, about how a product or brand is to be integrated into content; and (4) extension of all regulation of product integration to cable television. Alternatively, these groups requested the creation of an industry code on embedded advertising. More recently, in 2007, Philip Rosenthal testified on behalf of the Writers Guild of America, West and the Screen Actors Guild before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce regarding the need for greater disclosure requirements because of product placement and product integration. In addition, in 2007, Patric Verrone testified on behalf of the Writers Guild of America, West, during the Federal Communications Commission's Public Hearing on Media Ownership in Chicago, Illinois regarding the need for greater disclosure requirements for product integration.

III. Discussion

10. We undertake this proceeding in order to consider the complex questions involved with the practice of embedded advertising, and to examine ways the Commission can advance the statutory goal entrusted to us of ensuring that that the public is informed of the sources of program sponsorship while concurrently balancing the First Amendment and artistic rights of programmers. We seek comment on current trends in embedded advertising and the efficacy of the Commission's existing sponsorship identification rules in protecting the public's right to be informed in light of these trends. More specifically, we seek comment on whether and how Sections 73.1212 and 76.1615 of the Commission's rules should be amended in order to fulfill the purposes of Sections 317 and 507 of the Communications Act.

11. We seek comment on the application of the sponsorship identification regulations to various embedded advertising techniques. As noted above, the Commission in 1960 issued a public notice stating that sponsorship identification requirements applied to ''hidden'' commercials embedded in interview programs.[1] How often are these embedded advertising practices occurring and in what form? Are the existing rules effective in ensuring that the public is made aware of product placement and product integration in entertainment programming? Are persons involved in the production or preparation of program matter intended for broadcast fulfilling their obligations under Section 507? Are broadcasters and cable operators fulfilling their reasonable diligence obligations under Section 317(c) and the Commission's rules? Does embedded advertising fit within the exception to disclosure requirements that applies where the commercial nature and identity of the sponsor is obvious?[2]

12. We also seek comment on whether modifications to the sponsorship identification rules are warranted to address new developments in the use of embedded advertising techniques. Are the concurrent disclosures requested by Commercial Alert necessary to ensure that the public is aware of sponsored messages that are integrated into entertainment programming?[3] Would concurrent disclosures be more or less disruptive to radio programming? Are other rule modifications warranted? Should we require disclosures before or after, or before and after, a program containing integrated sponsored material?[4] Should we require disclosure during a program when sponsored products and/or services are being displayed? Should we require both visual and aural disclosure for televised announcements?[5] Should these disclosures contain language specifying that the content paid for is an ''advertisement'' or other specific

[1] *See Inquiry Into Hidden Commercials In Recorded ''Interview'' Programs,* Public Notice, 40 F.C.C. 81 (1960). In its petition, Commercial Alert stresses that more recently, several pharmaceutical companies have used paid spokespersons to promote certain drugs, ''often without disclosing that they were paid by pharmaceutical companies, or had other financial ties to them.'' *See* Commercial Alert Petition at 5.

[2] *See* 47 CFR 73.1212(f).

[3] *See* Commercial Alert Petition at 4.

[4] *Id.*

[5] *See Writers Guild White Paper* at 8. We note that in a 1991 Report and Order, the Commission adopted a rule requiring both audio and video sponsorship identification for television political advertisements. *In the matter of Codification of the Commission's Political Programming Policies,* 7 FCC Rcd 678 (1991). However, as part of the same proceeding, in response to petitions for reconsideration addressing these requirements, the Commission subsequently eliminated the audio identification (agreeing with petitioners that this requirement was unduly burdensome to candidates, particularly for short spot announcements) and set forth the specific standards for video sponsorship identification currently in effect. 7 FCC Rcd 1616 (1992).

terms?[6] Should we require that radio disclosures be of a certain duration or of a certain volume?

13. We further seek comment on the First Amendment implications of possible modifications to the sponsorship identification rules to address more effectively embedded advertising techniques. In particular, we invite comment on the arguments raised by WLF and FAC in response to Commercial Alert's petition. Would the imposition of concurrent disclosure requirements or other regulations infringe on the artistic integrity of entertainment programming, as WLF argues? Would such a regulation be paramount to a ban on embedded advertising, as asserted by WLF and FAC? Does the apparently common existing practice of superimposing unrelated promotional material at the bottom of the screen during a running program belie WLF's and FAC's contention that concurrent identification would effectively preclude product integration as a form of commercial speech because it would ''infringe on artistic integrity''? Are the government interests at stake here substantial enough to justify any such requirements? How can the Commission ensure that any modified regulations are no more extensive than necessary to serve these interests?

14. We also seek comment on whether Section 317 disclosure requirements should apply to feature films containing embedded advertising when re-broadcast by a licensee or provided by a cable operator. We note that in its prior Order, the Commission granted a Section 317 waiver for feature films.[7] We found that there was a lack of evidence of sponsorship within films and observed that there was a lag time between production of feature films and their exhibition on television. In the 1963 Order, the Commission found no public interest considerations which would dictate immediate application of Section 317 to feature films re-broadcast on television. At present, the Commission's rules continue to waive the sponsorship identification requirements for feature films ''produced initially and primarily for theatre exhibition.''[8] We seek comment on the use of embedded advertising in feature films today, and whether the Commission should revisit the decision to waive Section 317 disclosure requirements.

IV. Notice of Proposed Rulemaking

15. With the exception of sponsored political advertising and certain issue advertising, the Commission only requires that the announcement occur once during the programming and remain on the screen long enough to be read or heard by an average viewer. The sponsorship identification announcement must state ''paid for,'' ''sponsored by,'' or ''furnished by'' and by whom the consideration was supplied. In this *Notice of Proposed Rulemaking,* we seek comment on a proposed rule change to make the current disclosure requirement more obvious to the consumer by requiring that sponsorship identification announcements (1) have lettering of a particular size and (2) air for a particular amount of time. Currently, the sponsoring announcement for any television political advertising concerning candidates for public office must have lettering equal to or greater than four percent of the vertical picture height and air for not less than four seconds. Also, any political broadcast matter or broadcast matter involving the discussion of a controversial issue of public importance longer than five minutes ''for which any film, record, transcription, talent, script, or other material or service of any kind is furnished * * * to a station as inducement for the broadcasting of such matter'' requires a sponsorship identification announcement both at the beginning and the conclusion of the broadcast programming containing the announcement. We seek comment on whether the Commission should apply similar standards to all sponsorship identification announcements and, if so, we seek comment on the size of lettering for these announcements and the amount of time they should air. We seek suggestions on any other requirements for these announcements.

16. We also invite comment on whether the Commission's existing rules and policies governing commercials in children's programming adequately vindicate the policy goals underlying the Children's Television Act and Sections 317 and 507 with respect to embedded advertising in children's programming. If commenters believe that these rules and policies do not do so, we invite comment on what additional steps the Commission should take to regulate embedded advertising in programming directed to children. For example, we note that embedded advertising in children's programming would run afoul of our separation policy because there would be no bumper between programming content and advertising. Should that prohibition be made explicit in our rules?

17. The Writers Guild of America asks that we extend regulation of product integration to cable television. Section 76.1615 of the Commission's rules applies to origination cablecasting by a cable operator, which is defined as ''programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.'' Should the Commission take additional steps with respect to sponsorship identification announcements required of cable programmers?

18. We also invite comment on issues raised by radio hosts' personal, on-air endorsements of products or services that they may have been provided at little or no cost to them. In such circumstances, should we presume that an ''exchange'' of consideration for on-air mentions of the product or service has occurred, thus triggering the obligation to provide a sponsorship announcement? Should we do so in all such circumstances or should we limit this presumption to situations where other factors enhance the likelihood that an exchange of consideration for air time has taken place. In addition, we invite comment on the scope of the ''obviousness'' exception to the sponsorship announcement requirement. Does that exception apply to endorsements or favorable commentary by a radio host that are integrated into broadcast programming, *i.e.*, made to sound like they are part of a radio host's on-air banter rather than an advertisement?

V. Administrative Matters

19. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Inquiry and Notice of Proposed Rulemaking.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice Inquiry and Notice of Proposed Rulemaking,* and they should have a separate and distinct heading designating them as responses to the IRFA.

20. *Paperwork Reduction Act Analysis.* This *Notice Inquiry and Notice of Proposed Rulemaking* contains potential revised information collection

[6] *See* Commercial Alert Petition at 4.

[7] *In the Matter of Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules,* Report and Order, 34 F.C.C. 829, 841 (1963).

[8] *See* 47 CFR 73.1212(h).

requirements. If the Commission adopts any revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

21. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

22. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, *interested* parties may file comments September 22, 2008; reply comments are due on or before October 22, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

23. *Additional Information.* For additional information on this proceeding, contact John Norton, *John.Norton@fcc.gov,* or Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in the *Notice Inquiry and Notice of Proposed Rulemaking* on a substantial number of small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice Inquiry and Notice of Proposed Rulemaking.* The Commission will send a copy of the *Notice Inquiry and Notice of Proposed Rulemaking,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *Notice Inquiry and Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

25. *Need for, and Objectives of, the Proposed Rules.* Our goal in commencing this proceeding is to seek comment on current trends in embedded advertising and potential changes to the current sponsorship identification regulations with regard to embedded advertising. Given the increased prevalence of embedded advertising techniques, it is important that sponsorship identification rules protect the public's right to know who is paying to air commercials or other program matter on broadcast television and radio and cable.

26. In this *Notice Inquiry and Notice of Proposed Rulemaking,* we seek comment on a proposed rule change to make the current disclosure requirement more obvious to the consumer by requiring that sponsorship identification announcements (1) have lettering of a particular size and (2) air for a particular amount of time, and seek suggestions for any other requirements for these announcements. We also invite comment on whether the Commission's existing rules and policies governing commercials in children's programming adequately vindicate the policy goals underlying the Children's Television Act and Sections 317 and 507 with respect to embedded advertising in children's programming. We also ask whether we should take additional steps with respect to sponsorship identification announcements required of cable programmers. In addition, we

invite comment on issues raised by radio hosts' personal, on-air endorsements of products or services that they may have been provided at little or no cost to them: should we presume that an ''exchange'' of consideration for on-air mentions of the product or service has occurred, thus triggering the obligation to provide a sponsorship announcement; and does the ''obviousness'' exception to the sponsorship announcement requirement apply to endorsements or favorable commentary by a radio host that are integrated into broadcast programming, *i.e.*, made to sound like they are part of a radio host's on-air banter rather than an advertisement?

27. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303(r), 317, 403, and 507 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) & (j), 303(r), 303a, 317, 403, and 508.

28. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

29. *Television Broadcasting.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: such firms having $13 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,379. In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

30. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

31. In addition, the Commission has estimated that number of licensed noncommercial educational (NCE) television stations to be 380. These stations are non-profit, and therefore considered small entities. In addition, there are also 2,295 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

32. *Cable Television Distribution Services.* Since 2007, these services have been newly defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed an associated small business size standard for this category, and that is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these cable firms can be considered to be small.

33. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

34. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

35. *Radio Stations.* The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs

by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6.5 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

36. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The *Notice Inquiry and Notice of Proposed Rulemaking* does not propose any additional recordkeeping requirements but these types of requirements may be suggested by commenters. Some of the proposed rules do require additional on-air reporting to the public of sponsorship identification, which could result in more sponsorship identification announcement requirements for stations/cable systems to monitor and for producers to insert into their programming.

37. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives, specifically small business alternatives, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

38. The proposals in the *Notice Inquiry and Notice of Proposed Rulemaking* would apply equally to large and small entities and we have no evidence that the burden of any of our proposals is significantly greater for small entities. As noted, some of the proposed rules do require additional on-air reporting to the public of sponsorship identification, which could result in more sponsorship identification announcement requirements for stations/cable systems to monitor and for producers to insert into their programming. We anticipate that some portion of the cost of compliance with the proposals will fall on producers of programming, which are indirectly affected. However, we acknowledge that some portion of the cost may fall on stations themselves. Accordingly, we welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such comments are based on evidence of potential economic differential impact of the regulations on small entities that might have to absorb some of the cost of compliance.

39. *Federal Rules that May Duplicate, overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16998 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 73, No. 143

Thursday, July 24, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 21, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Financial Management and Participation Report with Addendum.

OMB Control Number: 0584–0045.

Summary of Collection: The Women, Infants and Children Program (WIC) is authorized by section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health department). The State agencies award subgrants to local agencies to deliver program benefits and services to eligible participants. State agencies complete the FNS–798 to comply with two separate legislative requirements. The FNS–798 captures the required data and serves as an operational plan for State agencies. FNS must continuously forecast and reevaluate State agencies' funding needs, make timely funding and other management decisions, and assist State agencies with caseload and funds management. FNS needs the FNS–798A to determine if each State agency has met the statutory nutrition education and breastfeeding promotion and support minimum expenditure requirements found in 42 U.S.C. 1786(h)(3). The FNS–798A shows how much of each State agency's total nutrition services and administration (NSA) expenditures were made for nutrition education and for breastfeeding promotion and support activities.

Need and Use of the Information: FNS will use the information reported each month for program monitoring, funds allocation and management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and the interested public. FNS also uses the data to determine if the State has met the 97 percent performance standard for food and 10 percent performance standard for NS.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 90.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 4,523.

Food and Nutrition Service

Title: Child Nutrition Labeling Program.

OMB Control Number: 0584–0320.

Summary of Collection: The Child Nutrition Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS). The program is designed to aid schools and institutions participating in the National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Service Program by determining the contribution a commercial product makes towards the meal pattern requirements. The Child Nutrition Labeling Program is implemented in conjunction with existing label approval programs administered by the Food Safety and Inspection Service (FSIS), the Agricultural Marketing Service (AMS), and the U.S. Department of Commerce. To participate in the CN Labeling Program, industry submits labels to FNS of products that are in conformance with the FSIS label approval program (for meat and poultry), and the USDC label approval program (for seafood products).

Need and Use of the Information: FNS uses the information collected to aid school food authorities and other institutions participating in child nutrition programs in determining the contribution a commercial product makes towards the established meal pattern requirements. FNS uses all of the collected information to give the submitted label an approval status that indicates if the label can be used as part of the CN Labeling Program. Without the information CN Labeling Program would have no basis on which to determine how or if a product meets the meal pattern requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 269.

Frequency of Responses: Reporting: Other (as needed).

Total Burden Hours: 1,580.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–16952 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on July 31, starting at 8 a.m. at the Deschutes National Forest Supervisor's Office, 1001 SW., Emkay Drive, Bend, Oregon. There will be a 1 hour business meeting. Then, members will go to the field to the Bend Ft. Rock Ranger District to discuss winter recreation. The trip is scheduled to end at 4:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public and an open public forum is scheduled from 8:30 to 9 a.m.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Crescent Ranger District, Highway 97, Crescent, Oregon 97733, Phone (541) 433–3216.

John Allen,

Deschutes National Forest Supervisor.

[FR Doc. E8–16942 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0030]

Monsanto Company; Availability of Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a corn line developed by the Monsanto Company, designated as transformation event MON 89034, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in their petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment. This notice also announces the availability of our written determination and our finding of no significant impact.

DATES: *Effective Date:* July 24, 2008.

ADDRESSES: You may read the petition, environmental assessment, determination, finding of no significant impact, the comments we received on our previous notice, and our responses to those comments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. Those documents may also be viewed on the Internet at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0030*.

FOR FURTHER INFORMATION CONTACT: Dr. Robyn Rose, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0489, *e-mail: robyn.i.rose@aphis.usda.gov*. To obtain copies of the petition, environmental assessment, or the finding of no significant impact, contact Ms. Cindy Eck at (301) 734–0667, *e-mail: cynthia.a.eck@aphis.usda.gov*. To view those documents on the Internet, go to *http://www.aphis.usda.gov/brs/aphisdocs/06_29801p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/06_29801p_ea.pdf*.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On October 26, 2006, APHIS received a petition seeking a determination of nonregulated status (APHIS No. 06–298–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, for corn (*Zea mays* L.) designated as transformation event MON 89034, which has been genetically engineered for resistance to European corn borer and other lepidopteran pests, stating that corn line MON 89034 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340. Monsanto responded to APHIS' subsequent request for additional information and clarification and submitted an addendum to their petition on January 23, 2007.

Analysis

As described in the petition, corn transformation event MON 89034 has been genetically engineered to express the transgenes *cry1A.105* and *cry2Ab2*, both of which were derived from a well-characterized gene sequence from *Bacillus thuringiensis*, and encode insect control proteins. The neomycin phosphotransferase II (*nptII*) gene was used as a selectable marker, but was eliminated by traditional breeding methods in the later stages of development of MON 89034. Thus, MON 89034 contains only the *cry1A.105* and *cry2Ab2* expression cassettes. Expression of the transgenes by corn plants renders the corn line resistant to European corn borer, as well as other lepidopteran pests. Regulatory elements for the transgenes were obtained from *Agrobacterium tumefaciens*. These regulatory sequences are not transcribed and do not encode proteins. The DNA was introduced into corn cells using *Agrobacterium*-mediated transformation methodology with the T–DNA binary transformation vector designated PV ZMIR245.

In a notice [1] published in the **Federal Register** on December 13, 2007 (72 FR 70817–70819, Docket No. APHIS–2007–0030), we announced our receipt of the Monsanto petition and solicited comments on whether MON 89034 corn is or could be a plant pest. In that notice, we also made available for public comment a draft environmental assessment we prepared to analyze any potential environmental effects associated with the proposed

[1] To view the notice, petition, environmental assessment, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0030*.

determination of nonregulated status for the MON 89034 corn event.

We received 29 comments by the close of the 60-day comment period, which ended on February 11, 2008. There were 5 comments submitted in support of the petition to grant nonregulated status to MON 89034 corn and 24 that were opposed. APHIS' responses to these comments can be found as an attachment to the finding of no significant impact.

Determination

Based on APHIS' analysis of field, greenhouse and laboratory data submitted by Monsanto, references provided in the petition, other relevant information described in the environmental assessment, and comments provided by the public, APHIS has determined that MON 89034 will not pose a plant pest risk for the following reasons: (1) Gene introgression from MON 89034 corn into wild relatives in the United States and its territories is extremely unlikely and is not likely to increase the weediness potential of any resulting progeny or adversely affect genetic diversity of related plants any more than would introgression from traditional corn hybrids; (2) it exhibits no characteristics that would cause it to be more weedy than the non-genetically engineered parent corn line or other cultivated corn; (3) it does not pose a risk to non-target organisms, including beneficial organisms and threatened or endangered species, because the insecticidal activity of the Cry1A.105 and Cry2Ab2 proteins are limited to lepidopteran target pest species; (4) it does not pose a threat to biodiversity as it does not exhibit traits that increase its weediness and its unconfined cultivation should not lead to increased weediness of other cultivated corn, it exhibits no changes in disease susceptibility, and it is unlikely to harm non-target organisms common to the agricultural ecosystem or threatened or endangered species recognized by the U.S. Fish and Wildlife Service; (5) compared to current corn pest and weed management practices, cultivation of MON 89034 corn should not impact standard agricultural practices in corn cultivation and controlling volunteer corn any differently than any other deregulated corn line expressing Cry proteins. Moreover, MON 89034 should not present any new or different impacts on organic farmers from those Bt corn lines that are currently cultivated; and (6) disease susceptibility and compositional profiles of MON 89034 corn are similar to those of its parent variety and other corn cultivars grown in the United States, therefore no direct or indirect plant pest effects on raw or processed plant commodities are expected.

In conclusion, APHIS has determined that there will be no effect on the federally listed threatened or endangered species, species proposed for listing, or their designated or proposed critical habitat resulting from a determination of nonregulated status for MON 89034 and its progeny. APHIS also concludes that new varieties bred from MON 89034 corn are unlikely to exhibit new plant pest properties, i.e., properties substantially different from any observed for corn event MON 89034, or those observed for other corn varieties not considered regulated articles under 7 CFR part 340.

National Environmental Policy Act

An EA was prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the determination of nonregulated status for MON 89034. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, and other pertinent scientific data, APHIS has reached a FONSI with regard to the determination that Monsanto corn line MON 89034 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of July 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–16947 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0019]

Pioneer Hi-Bred International, Inc.; Determination of Nonregulated Status for Soybean Genetically Engineered for Tolerance to Glyphosate and Acetolactate Synthase-Inhibiting Herbicides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a soybean line developed by Pioneer Hi-Bred International, Inc., designated as transformation event 356043, which has been genetically engineered for tolerance to glyphosate and acetolactate synthase-inhibiting herbicides, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Pioneer Hi-Bred International, Inc., in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* July 24, 2008.

ADDRESSES: You may read the petition, environmental assessment, determination, finding of no significant impact, the comments we received on our previous notice, and our responses to those comments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. To view those documents on the Internet, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0019*.

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301)

734–5531, *john.m.cordts@aphis.usda.gov*. To obtain copies of the petition, environmental assessment, or the finding of no significant impact, contact Ms. Cynthia Eck at (301) 734–0667; *e-mail: cynthia.a.eck@aphis.usda.gov*. Those documents are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/06_27101p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/06_27101p_ea.pdf*.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On September 28, 2006, APHIS received a petition seeking a determination of nonregulated status (APHIS petition number 06–271–01p) from Pioneer Hi-Bred International, Inc., of Johnston, IA (Pioneer), for soybean (*Glycine max* L.) designated as transformation event 356043, which has been genetically engineered for tolerance to glyphosate and acetolactate synthase (ALS)-inhibiting herbicides, stating that soybean line 356043 does not present a plant pest risk.

Analysis

As described in the petition, 356043 soybean plants have been genetically engineered to express modified glyphosate acetyltransferase (GAT 4601) and ALS proteins, which confers tolerance to glyphosate and ALS-inhibiting herbicides. The *gat4601* gene is derived from *gat* genes from *Bacillus licheniformis*, a common soil bacterium. Expression of the *gat4601* gene is driven by a synthetic constitutive promoter (SCP1). The gene that confers tolerance to ALS-inhibiting herbicides is *gm-hra* and is a modified soybean ALS gene. Expression of the *gm-hra* gene is driven by a constitutive soybean S-adenosyl-L-methionine synthetase (SAMS) promoter. A single copy of these genes and their regulatory sequences were introduced into soybean somatic embryos using microprojectile bombardment.

Pioneer's 356043 soybean plants have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens. Pioneer's 356043 soybean plants have been field tested in the United States since 2003 under permits issued by APHIS. In the process of reviewing the permits for field trials of the subject soybean plants, APHIS determined that the vectors and other elements were disarmed and that trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

In a notice [1] published in the **Federal Register** on October 5, 2007 (72 FR 56981–56983, Docket No. APHIS–2007–0019), APHIS announced the availability of the Pioneer petition and a draft environmental assessment (EA) for public comment. APHIS solicited public comments on whether the subject soybean would present a plant pest risk and on the EA. APHIS received 110 comments by the close of the 60-day comment period, which ended on December 4, 2007. There were 18 comments submitted in support of the petition to grant nonregulated status to 356043 soybean plants and 92 that were opposed. APHIS' responses to these comments can be found as an attachment to the finding of no significant impact.

Determination

Based on APHIS' analysis of field, greenhouse, and laboratory data submitted by Pioneer, references provided in the petition, other relevant information described in the EA, and comments provided by the public, APHIS has determined that 356043 soybean will not pose a plant pest risk for the following reasons: (1) Gene introgression from 356043 soybean into wild relatives in the United States and its territories is extremely unlikely; (2) APHIS does not expect 356043 soybean to have any impacts on non-target organisms, including beneficial organisms and threatened or endangered species, because all the studies conducted on 356043 soybean and specific proteins show no evidence of toxicity and GAT4601 and GM–HRA protein assessments showed low likelihood of allergenicity; (3) soybean (*Glycine max*) is not considered to be a weed and it does not persist in unmanaged ecosystems; (4) APHIS does not expect cultivation of 356043 soybean to have significant impacts on non-target organisms, including beneficial organisms and threatened or endangered species, as a result of the use of EPA-registered glyphosate and ALS-inhibitor herbicides as these have been used safely on soybeans for many years; (5) analysis of available information demonstrates that 356043 soybean does not exhibit any traits that should cause increased weediness, and that its unconfined cultivation should not lead to increased weediness of other sexually compatible relatives (of which there are none in the United States); (6) if 356043 soybeans were to be grown commercially, the effects on agricultural practices (e.g., cultivation, spray programs, crop rotation practices, planting rates, etc.) from introducing 356043 soybean into the environment should not be significantly different than previously deregulated glyphosate tolerant or RR®/STS® soybean lines; (7) APHIS does not expect 356043 soybean to cause significant impact on the development of herbicide tolerant weeds or cumulative impacts in combination with other glyphosate tolerant or Roundup Ready®/STS® (sulfonylurea tolerant soybean) crops; (8) if 356043 soybean were to be grown commercially, APHIS expects 356043 soybean will be used to breed soybean varieties suitable to a range of environments and maturity zones and replace some of the presently available glyphosate and ALS-inhibitor tolerant soybeans; deregulation of 356043 soybean should not alter the current potential impact to organic farming, organic farmers will still be able to purchase and grow non-transgenic soybeans and will be able to coexist with biotech soybean producers as they do now; (9) APHIS' analysis of agronomic performance, disease and insect susceptibility, and compositional profiles of 356043 soybean and its non-genetically engineered counterpart indicates no significant differences in composition between the two that would be expected to cause significant effects on raw or processed plant commodities from the deregulation of

[1] To view the notice, the EA, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0019*.

356043 soybean; and (10) when considered in light of other past, present, and reasonably foreseeable future actions, and considering potential environmental effects associated with adoption of 356043 soybean, APHIS could not identify significant environmental impacts that would result from granting nonregulated status to 356043 soybean.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for 356043 soybeans, an EA was prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the determination that Pioneer 356043 soybean line and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and finding of no significant impact are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of July, 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–16950 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Management Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of availability of program funds for the Agricultural Management Assistance (AMA) Program.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (2008 Act) expanded the geographic scope of the AMA Program to include the State of Hawaii. The Commodity Credit Corporation (CCC) administers AMA under the general supervision of the Chief of the Natural Resources Conservation Service (NRCS), who is one of the vice presidents of CCC.

CCC announces the availability of an additional $2.5 million of technical and financial assistance funds in fiscal year (FY) 2008 to participating States. AMA is available to States which have historically low participation in the Federal crop insurance program. These States are: Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, Wyoming, and Hawaii. Under AMA, a participant may use financial assistance to adopt conservation practices that will reduce or mitigate risks to their agricultural enterprises.

AMA is authorized by Section 524(b) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)), and administered under regulations found at 7 CFR part 1465. NRCS will, at a later date, formally amend the final rule located in 7 CFR part 1465 to add Hawaii as an area which is eligible for AMA assistance.

DATES: July 24, 2008 to September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Harry Slawter, Director, Financial Assistance Programs Division, NRCS, Post Office Box 2890, Washington, DC 20013; telephone: (202) 720–1845; facsimile: (202) 720–4265; e-mail: *harry.slawter@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: CCC hereby announces the availability of up to $2.5 million in FY 2008 to provide technical and financial assistance to producers under AMA. AMA assistance helps producers develop and implement conservation practices that reduce or mitigate agricultural production risks. Conservation practices, available under AMA, reduce soil erosion, improve watershed management or irrigation structures, utilize integrated pest management principles, and assist producers in transitioning to organic-based farming.

AMA was established in 2000. Since that time, AMA has been made available to 15 States, listed in statutory authority, in which participation in the Federal crop insurance program has been historically low. The 15 States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Vermont, West Virginia, and Wyoming. The 2008 Act expanded AMA's geographic scope to include the State of Hawaii.

The 2008 Act provided for the continuation of conservation programs in 2008. AMA will continue to use the policies and operating procedures outlined in AMA's regulation (7 CFR part 1465) for program implementation in 2008. Individuals interested in applying for AMA assistance may contact their local Department of Agriculture (USDA) service center in participating AMA States. For a listing of local USDA service centers, consult: *http://offices.sc.egov.usda.gov/locator/app?agency=nrcs*.

Signed in Washington, DC, on July 17, 2008.

Arlen L. Lancaster,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. E8–16920 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Caribou-Targhee National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Teton Basin Ranger District of the Caribou-Targhee National Forest will begin charging $100.00 for the overnight rental of Driggs Cabin. Rentals of other cabins and guard stations on the Caribou-Targhee National Forest have shown that the public appreciates and enjoys the availability of this type of facility. Funds from the rental will be used for the continued operation and maintenance of the Driggs Cabin.

DATES: The Driggs Cabin will become available for rent in January 2009. The Cabin will be open for the public to rent between November 1st and April 30th annually. The Driggs Cabin will continue to function as seasonal employee housing annually from May 1st to October 31st.

ADDRESSES: Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Kurt Kluegel, Natural Resource Specialist, Teton Basin Ranger District, (208) 354–2312.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish

a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Caribou-Targhee National Forest currently has 11 other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of Driggs Cabin has shown that people desire having this sort of developed recreation experience on the Caribou-Targhee National Forest. A market analysis indicates that the $100.00 per night fee is both reasonable and acceptable for this sort of recreation experience.

People wanting to rent Driggs Cabin will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a fee for reservations.

Dated: July 17, 2008.

Wes Stumbo,

Caribou-Targhee National Forest, Engineering Branch Chief.

[FR Doc. E8–16892 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Superior National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Sites.

SUMMARY: The Superior National Forest is planning to charge fees at fifteen camping areas. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. The fees listed are only proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites.

The following fifteen camping areas (all currently free use sites) are being proposed as fee sites: Baker Lake, Toohey Lake, Fourmile Lake, Hogback Lake, Kawishiwi Lake, Section 29 Lake, Silver Island Lake, White Pine Lake, Wilson Lake, Poplar River, Whitefish Lake, Harriet, Clara Lake, Cascade River and Eighteen Lake. These camping areas have many of the same amenities offered at the more developed campgrounds on the Superior National Forest and will be priced in accordance to the amenities provided at that site. A financial analysis is being completed to determine fee rates. The proposed fee to help maintain this site would be approximately $8 per campsite per night, and $4.00 per one additional vehicle per campsite. The fee season for these camping areas would start in early to mid May coinciding with the fishing season opener and would continue to the end of the field season in late September.

DATES: New fees would be implemented May 2009.

ADDRESSES: John Wytanis, District Ranger, Tofte Ranger District, 7355 West Highway 61, Tofte, MN, 55615.

FOR FURTHER INFORMATION CONTACT: Greyling Brandt, Recreation Manager, 218–663–8084. Information about proposed fee changes can also be found on the Superior National Forest Web site: *http://www.fs.fed.us/r9/forests/superior/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: July 16, 2008.

John Wytanis,

District Ranger.

[FR Doc. E8–16895 Filed 7–23–08; 8:45 am]

BILLING CODE 3410–11–M

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

[4/20/2008 through 5/30/2008]

Firm	Address	Date accepted for filing	Products
Pro-Con, Inc	1006 Industrial Drive, Pleasant Hill, MO 64080.	5/20/2008	Custom machine parts.
Prime Eco Group, Inc	2933 Highway 60 South, Wharton, TX 77488.	5/20/2008	Construction and oil field chemicals, including concrete curing compounds and asphalt curing.
Machining Technology, Inc	529F Main Street, Harwood, PA 18201.	5/21/2008	Metal parts for the commercial industry.
Currier Plastics, Inc	101 Columbus Street, Auburn, NY 13021.	5/30/2008	Plastic components and assemblies (and associated tooling).
California Pacific Door, Inc	16890 Church Street, Morgan Hill, CA 95037.	5/23/2008	High quality rigid thermofoil (RTF) cabinet doors.
Indi-Champ, Inc., dba: Electro Circuits LLC.	5706 Green Ash Dr., Houston, TX 77081.	4/30/2008	Printed circuit boards.
Gulf Island Shrimp & Seafood II, LLC.	3935 Ryan Street, Lake Charles, LA 70605.	5/16/2008	Processed and frozen shrimp for the retail market.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—Continued

[4/20/2008 through 5/30/2008]

Firm	Address	Date accepted for filing	Products
Alfred Manufacturing Company	4398 Elati Street, Denver, CO 80216.	4/25/2008	Process raw materials which include steel, aluminum, brass, assembly screws, plastic injection molded parts.
National Tool and Manufacturing	100 North 12th Street, Kenilworth, NJ 07033.	4/25/2008	Mold bases, dies, tools, jigs, and fixtures.
Bayside Tool Company	7900 Middle Road, PO Fairview, PA 16415.	4/20/2008	Molds for plastic industry.
National Spinning Co., Inc	1481 West 2nd Street, Washington, NC 27889.	4/24/2008	Spun acrylic yarn.
Custom Shell, Inc	5507 114th Street, Lubbock, TX 79424.	4/22/2008	Cleaned and shelled pecans.
Progressive Service Die Company	217 White Street, Jacksonville, NC 28546.	4/23/2008	Forged and pre-hardened/pre-sharpened clicker dies, steel rule dies, and radio frequency.
Line Manufacturing, Inc	7 Town Line Road, Wolcott, CT 07616.	4/24/2008	Shells, cans, ferrules, caps, fittings, closures, eyelets, and deep drawn metal stampings.
Kimble Precision, Inc	418 8th Street, SE., Unit, Loveland, CO 80537.	4/24/2008	Machine parts and other components used in the electronics industry.
Llink Technologies, L.L.C	3953 Burnsline Road, Brown City, MI 48416.	4/24/2008	Sun visors and interior trim components for auto vehicles.
Advanced Machine & Tool Corporation.	3706 Transportation Drive, Fort Wayne, IN 46818.	4/29/2008	Industrial and commercial machinery and automation equipment.
Silver Needle Co	1628 Big Creek Road, Kellogg, Idaho 83837.	4/25/2008	Clothing and other durable goods.
D & M Plastics Corporation	150 French Road, Burlington, IL 60610.	4/25/2008	Plastic injection molding.
Trident Manufacturing, Inc	175 Mill Street, Burlington, IL 60109–0697.	4/25/2008	Electronic connectors, components and assemblies.
Frey & Weiss Precision Machining, Inc.	384 Beinoris Drive, Wood Dale, IL 60191–1223.	5/21/2008	Precision machined metal parts for radar equipment.
Rio Properties, Inc. dba: Southern Nurseries.	P.O. Box 1025, Donna, TX 78537	4/22/2008	Madagascar date palm, Bismarck palm, desert fan palm, Florida Cuban royal, fox tail, and live oak tree.

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: July 25, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–16939 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Blue Airways FZE and Blue Airways: Balli Group PLC, 5 Stanhope Gate, London, UK, W1K 1AH; Balli Aviation, 5 Stanhope Gate, London, UK, W1K 1AH; Balli Holdings, 5 Stanhope Gate, London, UK, W1K 1AH; Vahid Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH; Hassan Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH; Blue Sky One Ltd., 5 Stanhope Gate, London, UK, W1K 1AH; Blue Sky Two Ltd., 5 Stanhope Gate, London, UK, W1K 1AH; Blue Sky Three Ltd, 5 Stanhope Gate, London, UK, W1K 1AH; Blue Sky Four Ltd, 5 Stanhope Gate, London, UK, W1K 1AH; Blue Sky Five Ltd., 5 Stanhope Gate, London, UK, W1K 1AH; Blue Sky Six Ltd., 5 Stanhope Gate, London, UK, W1K 1AH; Blue Airways, 8/3 D Angaght Street, 376009 Yerevan, Armenia; Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran: Respondents; and Blue Airways FZE, a/k/a Blue Airways, #G22 Dubai Airport Free Zone, P.O. Box 393754 DAFZA, Dubai, UAE; Blue Airways, Riqa Road, Dubai 52404, UAE, Related Persons

Order Making Temporary Denial of Export Privileges Applicable to Related Persons

Pursuant to Section 766.23 of the Export Administration Regulations (''EAR'' or ''Regulations''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the Temporary Denial Order (''TDO'') that was issued against the above-named Respondents on March 17, 2008, and published in the **Federal Register** on March 21, 2008 (73 Fed.Reg. 15130), applicable to the following entities, as persons related to Respondent Blue Airways, of Yerevan, Armenia (hereinafter ''Blue Airways of Armenia''):

Blue Airways FZE, a/k/a Blue Airways, #G22 Dubai Airport Free Zone, P.O. Box 393754 DAFZA, Dubai, United Arab Emirates, (hereinafter ''Blue Airways FZE UAE'');

Blue Airways, Riqa Road, Dubai 52404, United Arab Emirates, (hereinafter ''Blue Airways UAE'').

Section 766.23 of the Regulations provides that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders. * * *'' 15 CFR 766.23(a).

The TDO was issued based on a showing, *inter alia*, that the Respondents knowingly engaged in conduct prohibited by the EAR by re-exporting three U.S. origin aircraft to Iran and were attempting to divert an additional three U.S. origin aircraft to Iran.

The TDO imposed is an order that may be made applicable to related persons pursuant to Section 766.23 upon evidence indicating that the person is related to one or more of the Respondents by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add this entity to the Order imposed against Respondents in order to avoid evasion of that Order.

BIS has presented evidence that Blue Airways FZE UAE and Blue Airways UAE, are related to Respondent Blue Airways of Armenia by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Pursuant to Section 766.23, related persons may be added to this TDO upon a finding by me, as the official authorized to issue such orders, that the TDO should be made applicable to the related persons in order to prevent evasion of the TDO. 15 CFR 766.23(b).

BIS notified Blue Airways FZE UAE and Blue Airways UAE of its intent to take this action through letters dated June 4, 2008, in accordance with Sections 766.5(b) and 766.23 of the Regulations. BIS received a response dated June 17, 2008, asserting that Blue Airways FZE UAE and Blue Airways UAE are not owned or controlled by Blue Airways of Armenia. No supporting documentation or other evidence was provided to BIS, nor did the response deny any affiliation, position of responsibility or other connection in the conduct of trade or business with Blue Airways of Armenia.

It is my belief based on all the evidence presented in this matter that Blue Airways FZE UAE and Blue Airways UAE meet the requirements of Section 766.23 of the Regulations. Accordingly, I find that it is necessary to make the Order imposed against the above named Respondents applicable to Blue Airways FZE UAE and Blue Airways UAE in order to prevent the evasion of that Order.

It is now therefore ordered,

First, that having been provided notice and opportunity for comment as provided in Section 766.23 of the Regulations, Blue Airways FZE, a/k/a Blue Airways, #G22 Dubai Airport Free Zone, P.O. Box 393754 DAFZA, Dubai, United Arab Emirates, and Blue Airways, Riqa Road, Dubai 52404, United Arab Emirates (each a ''Related Person'' and collectively the ''Related Persons''), have been determined to be related to Respondent Blue Airways, 8/3 D Angaght Street, 376009, Yerevan, Armenia, by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order temporarily denying the export privileges of the Respondents applicable to these Related Persons in order to prevent evasion of the Order.

Second, that the denial of export privileges described in the Order against Respondents, which was published in the **Federal Register** on March 21, 2008, at 73 FR 15130, shall be made applicable to each Related Person, as follows:

I. The Related Person, its successors or assigns, and when acting for or on behalf of the Related Person, its officers, representatives, agents, or employees (collectively, ''Denied Person'') may not participate, directly or indirectly, 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. Benefiting 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 Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that 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.

Fourth, that in accordance with the provisions of Section 766.23(c) of the Regulations, the Related Persons may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

This Order shall be published in the **Federal Register** and a copy provided to each Related Person.

This Order is effective upon publication in the **Federal Register** and shall remain in effect until the expiration of the TDO on September 17, 2008, unless renewed in accordance with the Regulations.

Entered this 18th day of July, 2008.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E8–16935 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment, Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on August 7, 2008, 9 a.m., Room 6087B, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda:

Public Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.

CMM Presentation by Browne and Sharpe (tentative).

AMM Presentation by Optomec, Inc. (tentative).

3. Review of 2008 Wassenaar Proposals.
4. Report on proposed changes to the Export Administration Regulations.
5. Other Business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than July 31, 2008.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 16, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: July 20, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–16959 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

Summary: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed

of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately four times per year. Members of the Committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: The Export Administration Regulations (EAR) and Procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); and Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment). To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

For Further Information Contact: Ms. Yvette Springer on (202) 482–2813.

Dated: July 21, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–16960 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–851)

Certain Preserved Mushrooms From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China for the period February 1, 2007 to January 31, 2008.

EFFECTIVE DATE: July 24, 2008.

FOR FURTHER INFORMATION CONTACT: FOR MORE INFORMATION, CONTACT: Tyler R. Weinhold, or Robert James AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2657 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2008, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China for the period February 1, 2007 to January 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 6477 (February 4, 2008). In response, on February, 29, 2008, FujianYu Xung Fruit and Vegetable Foodstuff Development Co. (Yu Xing) submitted a request for an administrative review. Petitioners in this case did not request an administrative review. On March 31, 2008, the Department initiated an administrative review of Yu Xing. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, Request for Revocation in Part, and Deferral of Administrative Review, 73 FR 16837 (March 31, 2008). Yu Xing submitted a letter withdrawing its request for an administrative review on June 30, 2008.[1]

[1] The 90th day after the initiation of the review was Sunday, June 29, 2008; accordingly, Yu Xing submitted its withdrawal letter the following business day.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. In response to Yu Xing's timely withdrawal of its request for an administrative review, and pursuant to section 351.213(d)(1) of the Department's regulations, the Department hereby rescinds the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China for the period February 1, 2007, to January 31, 2008.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties for Yu Xing at the cash deposit rate in effect at the time of entry.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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 assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

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 section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 16, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–16999 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ20

Endangered Species; File No. 13544

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Jeffrey Schmid, Conservancy of Southwest Florida, 1450 Merrihue Drive, Naples, FL 34102, has applied in due form for a permit to take Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and green (*Chelonia mydas*) sea turtles for purposes of research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 25, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 13544.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of the proposed research activities is to characterize the aggregations of marine turtles in the nearshore waters of Lee County in southwest Florida. Turtles would be collected in Pine Island Sound, San Carlos Bay, Estero Bay, and adjacent Gulf of Mexico waters using a large-mesh, run-around strike net. Turtles would be measured, weighed, and tagged with Inconel tags on the trailing edge of the front flippers and a passive integrated transponder tag inserted in the left front flipper. Tissue samples would be collected for genetic and stable isotope analyses. The applicant requests annual take of 130 Kemp's ridley, 50 loggerhead, 20 green, and five hawksbill turtles. A subset of Kemp's ridleys would be held for 24–48 hrs. for fecal sample collection. Another subset of Kemp's ridleys would receive electronic transmitters to investigate their movements, home range, and habitat associations. The applicant is requesting a five-year permit.

Dated: July 18, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–16994 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB27

Marine Mammals; File No. 373–1868

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

ACTION: Notice; withdrawal of application.

SUMMARY: Notice is hereby given that the Point Reyes Bird Observatory, 3820 Cypress Drive #11, Petaluma, California 94954, has withdrawn an application for an amendment to Permit No. 373–1868 for takes of Steller sea lions (*Eumetopias jubatus*) incidental to research.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jaclyn Daly, (301)713–2289.SUPPLEMENTARY INFORMATION:

On July 10, 2007, notice was published in the **Federal Register** (71 FR 44020) that an application had been filed by the above-named organization for authorization to incidentally harass Steller sea lions during research on pinnipeds in California. The applicant has withdrawn the application.

Dated: July 18, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–16988 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket Number: 080717848–8849–01

Instructions to Assist Manufacturers Submitting Notices of Intent (NOI) for Digital-to-Analog Converter Boxes

AGENCY: National Telecommunications and Information Administration

ACTION: Notice

SUMMARY: This notice announces that manufacturers that intend to submit, for the first time, digital-to-analog converter boxes to the National Telecommunications and Information Administration (NTIA) for certification as part of the TV Converter Box Coupon Program (Coupon Program) must submit their Notice of Intent (NOI) before September 1, 2008. Manufacturers who have to date received a certification notice for one or more converters (repeat manufacturers) have until September 30, 2008 to submit their NOI for any additional digital-to-analog converter boxes for certification under the Coupon Program. The intent of this notice is to allow NTIA to better plan and anticipate

resource needs to process a finite group of converters.

FOR FURTHER INFORMATION CONTACT: Maureen Lewis, Technical Quality Liaison, TV Converter Box Coupon Program, mlewis@ntia.doc.gov, (202) 482–1892.

SUPPLEMENTARY INFORMATION: On March 15, 2007 NTIA published regulations to implement and administer a coupon program for digital-to-analog converter boxes.[1] Among other things, the Final Rule specifies that manufacturers interested in participating in the coupon program must submit a Notice of Intent (NOI) to NTIA. The regulations provide the necessary information to include in the NOI and also provide technical specifications and features required for a converter box to qualify for the coupon program.

Manufacturers' strong interest in the TV Converter Box Coupon Program has resulted in the certification of more than 125 coupon eligible converter boxes (CECBs), a third of which include the analog pass-through feature. NTIA appreciates manufacturers' efforts to offer consumers a range of product choices that will enable them to experience the benefits of the digital transition. The rapid approach of the analog shut-down, however, necessitates that NTIA redeploy some of its limited resources to other important aspects of Program administration such as resolving consumer concerns and mitigating waste, fraud, and abuse. Therefore, this Notice provides manufacturers information to facilitate their planning for further program participation.

NTIA informs manufacturers that first time manufacturers have until **September 1, 2008** to submit a Notice of Intent for their digital-to-analog converter boxes to ensure processing and certification in time to participate in the Coupon Program. Pursuant to NTIA's regulations, NOIs shall be submitted to NTIA at least three months prior to submission of the manufacturer's test report and samples.[2] This time is needed to complete the lengthy process to test and validate each converter box. NTIA is establishing a cutoff date for NOIs to ensure that there is enough time to complete the certification process for converter boxes before the expiration of the Coupon Program. NTIA has found that the time and resources needed to review and complete the certification process with first-time manufacturers is often much greater than that needed to complete a technical review from a manufacturer that has successfully completed the process. By establishing September 1, 2008 as the last date for first-time manufacturers to submit NOIs, NTIA will be able to plan and anticipate resource needs to process a finite group of converters. NTIA reminds manufacturers the regulations also require that NOIs must include a brief description of the converter box, including permitted as well as required features.

Therefore, after **September 1, 2008,** NTIA will only accept NOIs from repeat manufacturers, *i.e.,* manufacturers that have, by that date, received a certification notice for one or more converters. These repeat manufacturers will have until September 30, 2008 to submit NOIs for any additional digital-to-analog converter boxes to NTIA for certification as part of the Coupon Program.

Manufacturers who have submitted NOIs that are pending with NTIA as of the date of this Notice, are requested to submit complete test results associated with each pending NOI **no later than September 30, 2008.** There are currently pending with NTIA many NOIs that indicate the manufacturer's intention to submit test results some months ago. In order to prompt manufacturers to complete and submit test results, NTIA establishes this end date. NTIA will close the file associated with any NOI which has not been followed by submission of completed test results by September 30, 2008.

Additional guidance on testing or submission procedures may be provided on NTIA's web page under Manufacturers' Frequently Asked Questions, pursuant to Section 301.5(e), www.ntia.doc.gov.

Questions about the procedure for submitting NOIs or other aspects of NTIA's technical certification process may be submitted to:

Art Wall, Technical Advisor

TV Converter Box Coupon Program

US Department of Commerce

Washington, DC 20230

awall@atlanticbb.net

Dated: July 18, 2008.

Meredith Atwell Baker,

Acting Assistant Secretary for Communications and Information

[FR Doc. E8–16903 Filed 7–23–08; 8:45 am]

BILLING CODE 3510–60–S

[1] *See* Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes (final Rule), 72 FR 12097 (March 15, 2007).

[2] 47 C.F.R.§ 301.5(a).

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Final Supplemental Programmatic Environmental Impact Statement (SPEIS) for Army Growth and Force Structure Realignment To Support Operations in the Pacific Theater

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces the availability of the Final SPEIS for the growth and realignment of the U.S. Army to support operations in the Pacific Theater. Pursuant to the National Environmental Policy Act (NEPA), the Department of the Army has prepared a Final SPEIS that evaluates the potential environmental and socioeconomic effects associated with alternatives for implementing the growth and realignment of the Army's forces to support operations in the Pacific Theater. Potential impacts have been analyzed in the Final SPEIS at installations that are capable of supporting operations in the Pacific Theater.

DATES: The waiting period for the Final SPEIS will end 30 days after the publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the Final SPEIS contact: Public Affairs Office, U.S. Army Environmental Command, Building E4460, Attention: IMAE–PA, 5179 Hoadley Road, Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office at (410) 436–2556 or facsimile at (410) 436–1693 during normal business hours Monday through Friday 9 a.m. to 5 p.m. Eastern Daylight Time or e-mail APGR *USAECPublic Comments@conus.army.mil.*

SUPPLEMENTARY INFORMATION: The Army's Proposed Action and analysis within the Final SPEIS covers those activities the Army may undertake from 2008 through 2013 to grow, realign, and transform its forces to support operations in the Pacific Theater. Implementation of the Proposed Action will ensure the proper capabilities exist to sustain operations and regional security in the Pacific Theater now and into the foreseeable future. The implementation of the Proposed Action will better meet military operational needs, national and regional security requirements, and the needs of the Army's Soldiers and their Families. To

implement the Proposed Action, new units with critical military skills must be stationed at locations that are capable of supporting strategic deployment and mobilization requirements to support operations in the Pacific Theater. These stationing locations must be capable of accommodating unit training, garrison operations, maintenance activities, and the needs of Soldiers and their Families.

The SPEIS supplements the Army's Final Programmatic EIS for Army Growth and Force Structure Realignment (2007). The Final SPEIS evaluates installations that are capable of supporting operations in the Pacific Theater. The Final SPEIS includes analysis of actions that will need to be taken (such as the construction of housing and quality of life facilities, the construction of new training ranges and infrastructure, and changes in the intensity of use of maneuver land and firing ranges) to station new units as part of the Army's overall efforts to grow and realign the force in the Pacific Theater.

The Army has considered a full range of sites for implementing the Proposed Action. Alternative stationing locations that the Army has considered for supporting the Proposed Action include the major training installations the Army considered in its 2007 Programmatic EIS as well as four additional installations in Hawaii and Alaska. Additional installations include Schofield Barracks Military Reservation (SBMR), HI; Fort Shafter, HI; Fort Richardson, AK; and Fort Wainwright, AK. Each of these installations could receive additional Soldiers as part of alternatives being examined.

Alternatives in the Final SPEIS include stationing of additional Combat Support (CS) or Combat Service Support (CSS) units or new support brigades. The following alternatives were analyzed in the SPEIS: (1) Support operations in the Pacific Theater by implementing Army-wide modular force and transformation recommendations within U.S. Army Pacific. This alternative involves the stationing of approximately 1,500–2,000 Soldiers at Army installations in Hawaii and in Alaska; (2) In addition to Army growth under Alternative 1, Alternative 2 includes growth and transformation of Army forces to support operations in the Pacific Theater by stationing additional CS and CSS units in locations capable of supporting these operations. The Army would station approximately 1,500–2,500 additional CS and CSS Soldiers beyond Alternative 1; (3) In addition to Army 3 growth under Alternatives 1 and 2, as part of Alternative 3 the Army would grow, transform, and realign forces by stationing additional support brigades in locations capable of supporting operations in the Pacific Theater. Support brigades could include the stationing of an additional Maneuver Enhancement Brigade (approximately 570 Soldiers), a Combat Aviation Brigade (approximately 2,800 Soldiers), and/or a Fires Brigade (approximately 1,600 Soldiers).

In addition to the above alternatives, the No Action Alternative was considered and used as a baseline for comparison of alternatives. It is not a viable means for meeting the current and future strategic security and defense requirements of the nation. The No Action Alternative would retain U.S. Army forces in their current end strength and force structure. The No Action Alternative includes the implementation of stationing actions directed by Base Realignment and Closure legislation in 2005, Army Global Defense Posture Realignment, Army Modular Forces initiatives, and Army Growth and Force Structure Realignment decisions published in January 2008.

The Army's preferred alternative identified in the Final SPEIS is to implement Alternative 3. This alternative allows for full support of those activities the Army may undertake from 2008 through 2013 to grow, realign, and transform its forces to support operations in the Pacific Theater. Under this alternative, the Army is projecting that it would station approximately 4,100 new Soldiers at locations that are capable of supporting the strategic and operational needs in the Pacific Theater. The implementation of the Proposed Action does not involve 4 the stationing of additional Army Brigade Combat Teams (BCT5). As part of the preferred alternative, the Army would station approximately 2,090 Soldiers in Alaska which includes an additional Maneuver Enhancement Brigade. In addition, the Army would station approximately 2,055 new Soldiers in Hawaii to implement Army-wide modularity and increase critical support capabilities in the Pacific Theater. No Fires Brigade or Aviation Brigade would be stationed to support the Proposed Action as part of the Preferred Alternative.

Analysis within the Final SPEIS covers those activities required to implement unit stationing actions associated with Army growth and force structure realignment to support operations in the Pacific Theater. Actions the Army will take to support unit stationing include the construction of housing and quality of life facilities (i.e., gymnasiums, hospitals, shopping areas), the construction of new training ranges and infrastructure, and changes in the intensity of use of maneuver land and firing ranges associated with the increased frequency of training events.

The Final SPEIS identifies the environmental and socioeconomic impacts associated with various unit stationing actions that could be implemented to support the Proposed Action. As the programmatic decision made at the Army Headquarters-level is implemented, follow-on NEPA documentation may be prepared to evaluate the specific environmental impacts likely to result from alternative means of carrying out the stationing actions, as well as identify any potential means for mitigating those impacts associated with the stationing decision.

A copy of the Final SPEIS can be accessed through the U.S. Army Environmental Command Web site at *http://www.aec.army.mil.*

Dated: July 18, 2008.

John E. Tesner, Jr.,

Assistant for Restoration, Office of the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. E8–16842 Filed 7–23–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, August 11, 2008, by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov*. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section

10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Tuesday, August 19, 2008, beginning at 3 p.m. and ending at approximately 6 p.m.

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: Access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference to discuss the following issues: (1) Nomination and selection process for the Committee's officers and (2) the implications of HEA reauthorization for the Committee's activities and plans in FY2009.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following addresses: *tracy.deanna.jones@ed.gov*. Please include your name, title, affiliation, complete address (including Internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Thursday, August 14, 2008.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA*.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. E8–17000 Filed 7–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Tuesday, September 2, 2008 by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov*. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Wednesday, September 10, 2008, beginning at 3 p.m. and ending at approximately 6 p.m.

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: Access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference solely to conduct the election of officers.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following address: *tracy.deanna.jones@ed.gov*. Please include your name, title, affiliation, complete address (including Internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Monday, September 8, 2008.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the

Committee's Web site, *http://www.ed.gov/ACSFA*.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. E8–17002 Filed 7–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 16, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–110–000.

Applicants: Baja California Power, Inc.; AIG Highstar Capital ll Ocean Star The N; AIG Highstar Capital ll Prism Fund Ocean; AIG Investor Ocean Star The Netherlands; Uluru Finance Limited; GMR Infrastructure (Malta) Limited.

Description: Baja California Power, Inc. submits an application for order authorizing Indirect Disposition of Jurisdictional Facilities under section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

Filed Date: 07/08/2008.

Accession Number: 20080710–0096.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–78–000.

Applicants: Shiloh Wind Project 2, LLC.

Description: Shiloh Wind Project 2 LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 07/11/2008.

Accession Number: 20080715–0019.

Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1384–034; ER03–1315–006; ER01–457–006; ER02–1485–008; ER03–1109–007; ER03–1108–007; ER00–1803–005; ER99–2329–006; ER04–733–004;

Applicants: Morgan Stanley Capital Group, Inc.; MS Retail Development Corp; Naniwa Energy LLC; Power Contract Finance, L.L.C.; Power Contract Financing II, Inc.; Power Contract Financing II, L.L.C.; South Eastern Generating Corporation; South Eastern Electric Development Corp; Utility Contract Funding II, LLC.

Description: Morgan Stanley Capital Group, Inc. et al. supplements their 6/30/08 updated market power analysis required by Order 697 and 697–A with a letter of concurrence from Deseret Generation & Transmission Coop.

Filed Date: 07/09/2008

Accession Number: 20080710–0131

Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER99–1293–010.

Applicants: Monmouth Energy, Inc.

Description: Montauk Energy, Inc. submits an errata to the Updated Market Power Analysis filed on 7/7/08 to revise Attachment B and Attachment C to describe a change in name of one of its upstream owners, etc.

Filed Date: 07/08/2008.

Accession Number: 20080709–0238.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Docket Numbers: ER00–3251–016; ER98–1734–015; ER01–1919–012.

Applicants: Exelon Generating Company, LLC; Commonwealth Edison Company; Exelon Energy Company.

Description: Exelon ASM Applicants submits revised tariff sheets under their respective market-based rate authorizations.

Filed Date: 07/09/2008.

Accession Number: 20080711–0022.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER00–2173–008.

Applicants: Northern Indiana Public Service Company.

Description: Northern Indiana Public Service Company submits supplement to its notice of change in status filed 6/30/08 pursuant to the requirements of Order 652.

Filed Date: 07/09/2008.

Accession Number: 20080711–0023.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER00–3080–003.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Co. submits revisions to its FERC Electric Tariffs to comply with FERC's requirements.

Filed Date: 07/10/2008.

Accession Number: 20080711–0123.

Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER01–205–028; ER98–4590–024; ER98–2640–026; ER99–1610–032.

Applicants: Xcel Energy Services, Inc.; Northern States Power Company, Public Service Company of Colorado; Southwestern Public Service Company.

Description: Xcel Energy Services submits Market-Based Rate Tariff Compliance Filing and on 7/10/08 submits a clarification to its 7/9/08 filing.

Filed Date: 07/09/2008; 07/10/2008.

Accession Number: 20080711–0033; 20080711–0032.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER01–1403–007; ER06–1443–003; ER01–2968–008.

Applicants: FirstEnergy Operating Companies; Pennsylvania Power Company, FirstEnergy Solutions Corp.

Description: FirstEnergy Companies submit revised tariff sheets providing for sale of certain ancillary services into markets administered by the Midwest Independent Transmission System Operator, Inc. etc.

Filed Date: 07/10/2008.

Accession Number: 20080714–0004.

Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER03–769–003.

Applicants: American PowerNet Management, LP.

Description: American PowerNet Management, LP submits petition for determination by the Commission that it qualifies as a Category 1 Seller and is exempt from the requirement to submit an updated market power analysis every three years.

Filed Date: 07/10/2008.

Accession Number: 20080714–0003.

Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–38–004.

Applicants: Northern Renewable Energy (USA) Ltd.

Description: Northern Renewable Energy (USA) Ltd. submits revised market-based rate tariff sheets in compliance with Order 697 and 697-A.

Filed Date: 06/30/2008.

Accession Number: 20080702–0204.

Comment Date: 5 p.m. Eastern Time on Monday, July 21, 2008.

Docket Numbers: ER08–808–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits the Alternate Pro Forma Sheet 30 in compliance with FERC's 6/6/08 Order.

Filed Date: 07/08/2008.

Accession Number: 20080710–0100.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Docket Numbers: ER08–951–001.

Applicants: PSEG Energy Resources & Trade, LLC.

Description: PSEG Energy Resources and Trade, LLC submits an amendment to its 5/13/08 filing of a new rate schedule.

Filed Date: 07/08/2008.

Accession Number: 20080710–0099.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Docket Numbers: ER08–1084–001.
Applicants: Evergreen Community Power, LLC.
Description: Evergreen Community Power, LLC submits an amendment to the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 07/10/2008.
Accession Number: 20080711–0124.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–1192–001.
Applicants: El Paso Electric Company.
Description: Public Service Company of New Mexico submits Certificate of Concurrence re the filing by El Paso Electric Company of the Facilities Modification and Construction Agreement for Holloman, Largo and Amrad Station Upgrades.
Filed Date: 07/10/2008.
Accession Number: 20080714–0001.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–1211–000.
Applicants: Green Energy Partners, LLC.
Description: Green Energy Partners, LLC submits a supplement to its Petition for Acceptance of Electric Tariff, Waivers of Blanket Authorization for FERC Electric Tariff, Original Volume 1.
Filed Date: 07/07/2008.
Accession Number: 20080707–0304.
Comment Date: 5 p.m. Eastern Time on Monday, July 28, 2008.

Docket Numbers: ER08–1232–000.
Applicants: Sconza Candy Company.
Description: Sconza Candy Company submits the Petition for Acceptance of FERC Electric Tariff, Original Volume 1 etc.
Filed Date: 07/10/2008.
Accession Number: 20080711–0087.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–1234–000.
Applicants: American Electric Power Service Corporation.
Description: AEP Texas Central Company submits executed generation interconnection agreement dated 6/18/08 between AEP Texas Gas Central and two electric generating companies, Nueces Bay WLE, LP and Barney Davis etc.
Filed Date: 07/08/2008.
Accession Number: 20080709–0229.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Docket Numbers: ER08–1237–000.
Applicants: Shiloh Wind Project 2, LLC.
Description: Shiloh Wind Project 2, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 07/11/2008.
Accession Number: 20080714–0292.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1239–000.
Applicants: Pocono Energy Services, LLC.
Description: Pocono Energy Services, LLC submits a notice of cancellation.
Filed Date: 07/08/2008.
Accession Number: 20080709–0232.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Docket Numbers: ER08–1241–000.
Applicants: Fitchburg Gas and Electric Light Company.
Description: Fitchburg Gas and Electric Light Company's Annual Informational Filing Under Formula Rates.
Filed Date: 07/09/2008.
Accession Number: 20080709–5077.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER08–1243–000.
Applicants: New York Independent System Operator, Inc.
Description: Request for limited tariff wavier re New York Independent System Operator, Inc.
Filed Date: 07/09/2008.
Accession Number: 20080711–0025.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER08–1244–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits the entire proposal containing revisions and amendments made to their Open Access Transmission and Energy Markets Tariff etc.
Filed Date: 07/09/2008.
Accession Number: 20080711–0101.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 30, 2008.

Docket Numbers: ER08–1245–000.
Applicants: Southern Company Services, Inc.
Description: Southern Companies submits a Notice of Cancellation of the Firm Point-to-Point Transmission Service Agreement with Calpine Energy Services, LP etc.
Filed Date: 07/10/2008.
Accession Number: 20080711–0126.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–1246–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits a notice of cancellation for an interconnection service agreement with Tenaska Virginia II Partners, LP et al.
Filed Date: 07/10/2008.
Accession Number: 20080711–0128.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–1247–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc. et al. submits an unexecuted Generation Dispatch and Energy Management Agreement.
Filed Date: 07/10/2008.
Accession Number: 20080711–0127.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: ER08–1248–000.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Co. submits a revision to the list of customers receiving point-to-point transmission service.
Filed Date: 07/07/2008.
Accession Number: 20080711–0129.
Comment Date: 5 p.m. Eastern Time on Monday, July 28, 2008.

Docket Numbers: ER08–1249–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Co. submits the Line Extension Agreement.
Filed Date: 07/10/2008.
Accession Number: 20080711–0122.
Comment Date: 5 p.m. Eastern Time on Thursday, July 24, 2008.

Docket Numbers: ER08–1251–000.
Applicants: Hershey Chocolate and Confectionary Corp.
Description: Hershey Chocolate & Confectionary Corporation submits a notice of cancellation of FERC Electric Tariff, Original Volume 1.
Filed Date: 07/11/2008.
Accession Number: 20080715–0024.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1252–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to their Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 07/11/2008.
Accession Number: 20080715–0023.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1253–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits their Market Rate Power Sales Tariff with an effective date of 9/9/08.
Filed Date: 07/11/2008.
Accession Number: 20080715–0022.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1254–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator Inc et al. submits revisions and amendments made to the ISO Transmission Owners Agreement in connection with the filing of the Amended BA Agreement.
Filed Date: 07/11/2008.
Accession Number: 20080715–0021.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1255–000.
Applicants: Oak Creek Wind Power, LLC.
Description: Petition of Oak Creek Wind Power, LLC for Order Accepting Market-Based Rate Tariff, Waivers and Blanket Authority etc.
Filed Date: 07/11/2008.
Accession Number: 20080714–0293.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1256–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to their Open Access. Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 07/11/2008.
Accession Number: 20080715–0020.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Docket Numbers: ER08–1257–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions and amendments to its Open Access Transmission etc.
Filed Date: 07/11/2008.
Accession Number: 20080714–0294.
Comment Date: 5 p.m. Eastern Time on Friday, August 1, 2008.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA07–31–003; OA07–94–001.
Applicants: Aquila, Inc.
Description: Aquila, Inc.'s Order No. 890 Compliance Filing.
Filed Date: 07/10/2008.
Accession Number: 20080710–5031.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: OA08–7–002.
Applicants: American Electric Power Service Corporation.
Description: AEP Operating Companies submits Third Revised Sheet 166 et al. to FERC Electric Tariff, 3rd Revised Volume 6 reflecting changes directed by the FERC's 3/10/08 Order to its Open Access Transmission Tariff etc.
Filed Date: 07/10/2008.
Accession Number: 20080714–0002.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Docket Numbers: OA08–119–000.
Applicants: Electric Energy, Inc.
Description: Electric Energy, Inc submits revisions to their OATT, First Revised Volume 1.
Filed Date: 07/10/2008.
Accession Number: 20080714–0284.
Comment Date: 5 p.m. Eastern Time on Thursday, July 31, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–16923 Filed 7–23–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Friday, July 18, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–446–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Co submits Ninth Revised Sheet 352 et al. to FERC Gas Tariff, First Revised Volume 1, effective 8/18/08.
Filed Date: 07/16/2008.
Accession Number: 20080717–0147.
Comment Date: 5 p.m. Eastern Time on Monday, July 28, 2008.

Docket Numbers: RP99–513–046
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Co submits Forty-Fourth Revised Sheet 7 et al. to FERC Gas Tariff, First Revised Volume 1, to be effective 8/1/08.
Filed Date: 07/16/2008.
Accession Number: 20080717–0148.
Comment Date: 5 p.m. Eastern Time on Monday, July 28, 2008.

Docket Numbers: RP08–447–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star's Request for Limited Waiver of Implementation Dates.
Filed Date: 07/17/2008.
Accession Number: 20080717–5054.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 29, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that

document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–16925 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–20–000]

Dominion Cove Point LNG, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Pier Reinforcement Project and Request for Comments on Environmental Issues

July 16, 2008.

The Federal Energy Regulatory Commission (FERC or Commission), the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard), and the U.S. Army Corps of Engineers (Corps) are evaluating the Pier Reinforcement Project proposed by Dominion Cove Point LNG, LP (DCP). The Pier Reinforcement Project would involve modifications to the existing offshore pier in the Chesapeake Bay at the Cove Point Liquefied Natural Gas (LNG) import terminal in Calvert County, Maryland. The proposed project would allow DCP to accommodate larger-sized LNG vessels carrying cargoes of up to 267,000 cubic meters of LNG. Currently, LNG vessels with a capacity of no greater than 148,000 cubic meters are authorized.

The FERC will be the lead federal agency in the preparation of an environmental assessment (EA) to address the environmental impacts of the proposed project, including the effects of proposed LNG vessel traffic on the waterway, and to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). We have requested the formal cooperation of other federal and state resource agencies with jurisdiction or special expertise with respect to environmental issues. To date, the Corps and the Coast Guard have agreed to serve as cooperating agencies during preparation of the EA. The Commission will use the EA in its decision-making process to determine whether or not to authorize the project under section 3 of the Natural Gas Act. The Corps will use the EA to fulfill the requirements of its regulations and the Clean Water Act Section 404(b)(1) Guidelines. The Coast Guard will review the EA as part of its decision-making process to determine the suitability of the waterway for LNG marine traffic. The determination of suitability will be made in a Letter of Recommendation pursuant to Title 33 of the Code of Federal Regulations (CFR), Section 127.009.

This Notice of Intent to Prepare an Environmental Assessment for the Proposed Pier Reinforcement Project (NOI) explains the scoping process we [1] will use to gather environmental input from the public and interested agencies, and summarizes the project review process for the FERC and our cooperating agencies. Details on how to submit comments are provided in the Public Participation section of this notice. Please note that the comment period will close on August 15, 2008.

We have prepared this NOI with the cooperation of the Corps and Coast Guard staff. The NOI is being sent to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American groups; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern. Your input will help the Commission determine the issues that need to be evaluated in the EA.

In accordance with Department of the Army (DA) permit procedures, the Corps is soliciting comments from the public; federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of the proposed project to waters of the United States, including jurisdictional wetlands. The Corps project number is NAB–2008–01241–M05 (200861276 T61277) (DOMINION COVE POINT LNG/PIER REINFORCEMENT PROJECT). Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for the proposal.

The Coast Guard is also soliciting comments from the public; federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the environmental impacts of its final suitability determination for the waterway for LNG marine traffic. This determination will be contained in its Letter of Recommendation (LOR). To make this determination, the Coast Guard will use comments received to assess environmental impacts on the entire waterway, including impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors, described in more detail below.

Summary of the Proposed Project

DCP is planning the Pier Reinforcement Project to upgrade its existing pier located approximately 1.1 miles offshore of the Cove Point LNG Terminal. The project would enable the safe docking, discharge, and departure of larger vessels than currently authorized. The larger vessels would carry cargoes of up to 267,000 cubic meters of LNG. To the extent that larger vessels are utilized, comparable quantities of LNG could be delivered using fewer vessels. Therefore, the proposed project may modify the size and frequency of LNG marine traffic transiting the waterway from the territorial sea to the Cove Point LNG Terminal. The terminal would remain capable of receiving the types of vessels that are in use today. The general location of the proposed facilities and a depiction of the waterway for LNG

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

marine traffic are shown in the figures included as Appendix 1.[2]

The existing pier consists of two berths, referred to as the North Berth and South Berth. Proposed construction includes the addition of four new mooring dolphins and two new breasting dolphins[3] at both the North Berth and the South Berth; new walkways to connect the mooring dolphins to the existing pier; service platform modifications; replacement of the existing gangway system with an automated gangway; upgrading the docking control system; and relocating some security systems. The proposed construction would increase the overall length of the pier by 300 feet. The modified pier would be able to accommodate vessels approximately 1,150 feet long and 187 feet wide, with a maximum draft of 39.4 feet.

To accommodate deeper-draft vessels, DCP would dredge approximately 150,000 cubic yards of sediment directly around the pier to achieve a final water depth of approximately 45 feet below mean lower low water. Depending on the chemical and physical properties of the dredged material, DCP may use the dredged material for beneficial use, but is also identifying a confined disposal facility in the case that beneficial use is not feasible.

Dredging and constructing the mooring and breasting dolphins would permanently impact approximately 25 acres of Chesapeake Bay bottom and would increase the footprint of the pier by 1.03 acres. All offshore construction activities would occur from the existing pier structure and temporary barges. Onshore impacts would be limited to a staging area for construction equipment and materials. DCP is currently identifying likely staging areas in the project vicinity.

DCP proposes to file a formal application with the Commission in December 2008. Pending Commission approval and receipt of applicable permits, DCP would begin construction in the third quarter of 2009. Work would extend approximately 18 months, and would be phased to allow construction on one berth while the other berth remains operational.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an LNG import terminal should be approved. The FERC and our cooperating agencies will use the EA to consider the environmental impact that could result if the project is authorized. NEPA also requires us to discover and address the public's concerns about proposals that require federal authorizations. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. With this NOI, we are requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during preparation of the EA.

Although no formal application has been filed with the Commission, the FERC staff has initiated its review of the project under its NEPA Pre-filing Process to encourage the early involvement of stakeholders and to identify and resolve issues before an application is filed. As part of our Pre-Filing Process, we have begun to contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. In addition, the Coast Guard has received a Letter of Intent from DCP dated May 5, 2008, requesting that the Coast Guard approve the suitability of the planned Cove Point construction. The Coast Guard must determine the suitability of the waterway for LNG marine traffic pursuant to 33 CFR 127.009. Representatives from the FERC and the Coast Guard participated in a public open house sponsored by DCP in Solomons, Maryland on June 16, 2008, during which they discussed the agencies' regulatory responsibilities and explained the environmental review process to interested stakeholders.

By this notice, we are formally announcing our preparation of the EA and requesting additional agency and public comments to help focus our analysis on potentially significant environmental issues related to the proposed actions. The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project, and the associated LNG marine traffic in the waterway, under the general headings of geology and soils; land use; water resources, fisheries, and wetlands; cultural resources; vegetation and wildlife; threatened and endangered species; air quality and noise; safety and reliability; and cumulative impacts. The EA will also evaluate reasonable alternatives to the proposed project, alternatives for agency actions, and make recommendations on how to lessen or avoid impacts on affected resources.

The Corps is responsible for evaluating DCP's application for a DA Individual permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) for proposed structures in and under navigable waters, dredging and the discharge of dredged, excavated, and/or fill material into waters of the United States, including wetlands. The Corps staff has initiated its review of the project under pre-application coordination although no formal application has been filed. The EA will serve as the DA permit application for this proposed project.

The Corps decision whether to issue the permits will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed project on the public interest. The evaluation of the impact on the public interest will include application, by the Corps, of the guidelines [Section 404(b)(1)] promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.

The Corps' decision will reflect the national concern for the protection and utilization of important resources. The benefits, which would be reasonably expected to accrue from the proposed project, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposed work will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply, and conservation, water quality, energy needs, safety, food and fiber production, consideration of property ownership, and in general, the needs and welfare of the people.

If applicable, the applicant is required to obtain a Water Quality Certification in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment (MDE). The Section 401 certifying agency has a statutory limit of one year in which to make their decision. Additionally, for Corps permitting purposes, the applicant is required to obtain Coastal

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] Dolphins are marine structures mounted on piles, against which a moored ship rests (breasting dolphin) and is secured to the pier (mooring dolphin).

Zone Management Consistency concurrence from the MDE, as well. It should be noted that the MDE has a statutory limit of six months in which to make its consistency determination.

The Coast Guard Letter of Recommendation Process

The Coast Guard's proposed action will be the issuance of a Letter of Recommendation (LOR), as required by regulation, as to the suitability of the waterway for the proposed LNG marine traffic associated with the project.

The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve of an LNG facility immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification pursuant to Title 33 CFR Part 105, and recommendations for siting as it pertains to the management of vessel traffic in and around the LNG facility.

More specifically, the Coast Guard is required to issue a LOR, as to the suitability of the waterway for LNG vessel traffic pursuant to 33 CFR 127.009. DCP submitted a Letter of Intent (which initiates the LOR process), on May 5, 2008 to the Coast Guard Captains of the Port Baltimore and Hampton Roads, proposing to modify the Cove Point LNG Terminal pier and requesting an LOR regarding the suitability of the waterway for LNG marine traffic. Upon receipt of a Letter of Intent, the Coast Guard Captains of the Port request that the applicant conduct an analysis of the suitability of the waterway for LNG vessel traffic *i.e.*, a Waterway Suitability Assessment (WSA). This will address the suitability of the waterway relating to the proposed changes to LNG vessel traffic. The WSA will be submitted to the Coast Guard to assist it in making its preliminary determination as to whether the waterway is suitable for proposed changes to LNG vessel traffic associated with the project. This preliminary determination will be contained in a Waterway Suitability Report (WSR) issued by the Coast Guard to the applicant.

The following factors, along with comments received during the public comment period, and the EA (and any other appropriate NEPA documentation), will be evaluated by the Coast Guard prior to its final determination as to the suitability of the waterway for the proposed LNG marine traffic to be contained in a LOR:

- The physical location and description of the facility;
- The layout of the facility and its berthing and mooring arrangements;
- The LNG vessels' characteristics and frequency of facility shipments;
- Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility within 15.5 miles of the facility;
- Density and character of the marine traffic on the waterway;
- Locks, bridges, or other man-made obstructions in the waterway; and
- The following factors adjacent to the facility:
- Depth of water;
- Tidal range;
- Protection from high seas;
- Natural hazards, including reefs, rocks, and sandbars;
- Underwater pipelines and cables; and
- Distance of berthed LNG vessels from the channel, and the width of the channel.

A LOR will be issued to the owner or operator of the LNG facility, DCP, and to the state and local governments having jurisdiction over the facility.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on preliminary agency consultations and information filed with the Commission. This preliminary list of issues, presented below, may be revised based on your comments and our continuing analyses.

- Potential impacts to the marine environment from construction activities and dredging including habitats, water quality, and aquatic life;
- Potential impacts to the public and environment from operation of larger LNG vessels along the entire waterway, including but not limited to, habitats, water quality, and aquatic life;
- Alternative dredge material disposal sites;
- Potential impacts on Essential Fish Habitat and state and/or federally-listed threatened and endangered species and marine mammals, both in the project area and along the entire waterway;
- Potential impacts to public use resulting from any modification of the safety and security zone, including the zone around the pier;
- Potential impacts to the coastal zone;
- Potential cumulative effects upon the entire waterway; and
- Potential noise impacts due to pile driving.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Pub. L. 04–267), requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect Essential Fish Habitat (EFH). The project site lies in or adjacent to EFH for the *Scopthalmus aquosos* (windowpane flounder) juvenile and adult; *Pomatomus saltatrix* (bluefish) juvenile and adult; *Peprilus triacanthos* (Atlantic butterfish) eggs, larvae, juvenile, and adult; *Paralicthys dentatus* (summer flounder) larvae, juvenile, and adult; *Centropristus striata* (black sea bass) juvenile and adult, and the eggs, larvae, juvenile, and adult stages of *Sciaenops ocellatus* (red drum), *Scomberomorus cavalla* (king mackerel), *Scomberomorus maculatus* (spanish mackerel), and *Rachycentron canadum* (cobia). The project has the potential to adversely affect EFH or the species of concern by loss of spawning, nursery, forage, and/or shelter habitat. The project area is not a Habitat Area of Particular Concern and is not colonized by submerged aquatic vegetation species. The Corps Baltimore District has preliminarily determined that the adverse effects of this project would be more than minimal, although not substantial, and an abbreviated consultation will be conducted with NMFS. NMFS will also be consulted regarding potential effects on EFH resulting from LNG vessel traffic along the waterway.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Pier Reinforcement Project, and proposed larger LNG vessels transiting along the entire waterway. Your comments should focus on the potential environmental effects, including impacts to people, reasonable alternatives, and measures to avoid or lessen environmental impacts. All filed comments will be posted to the FERC's public record. To ensure timely and proper recording, please send in your comments so that they will be received in Washington, DC on or before August 15, 2008.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the FERC's project docket number PF08–20–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling

staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ11.3.

You may also submit comments directly to the Corps. All comments received by the Corps will become part of the Corps' administrative record and will be considered by the Corps in evaluating the DA permit application. The Corps project number is NAB–2008–01241–M05 (200861276 T61277) (DOMINION COVE POINT LNG/PIER REINFORCEMENT PROJECT). Copies of any written statements expressing concern for aquatic resources may be submitted to: Mrs. Kathy Anderson, Corps of Engineers, CENAB–OP–RMS, P.O. Box 1715, Baltimore, Maryland 21203–1715.

In addition, you may submit comments directly to the Coast Guard. All comments received will become part of the Coast Guard's administrative record and will be considered by the Coast Guard in preparing the LOR regarding the suitability of the waterway for LNG vessel traffic. Comments may be submitted by mail to the below address: U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Attn: Waterways Management Div (BLDG 70), Baltimore, MD 21226–1791; or e-mail at *Amy.M.Beach@uscg.mil*.

Once DCP formally files its application with the FERC, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

We may mail the EA for comment. If you are interested in receiving the EA for review and/or comment, please return the Mailing List Retention Form (Appendix 2). If you do not return the Mailing List Retention Form, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits in the ''Docket Number'' field (*i.e.*, PF08–20). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Fact sheets prepared by the FERC are also available for viewing on the FERC Internet Web site (*http://www.ferc.gov*), using the ''For Citizens'' link. These fact sheets, including ''A Guide to LNG—What All Citizens Should Know'' and ''Guide to Electronic Information at FERC,'' address a number of typically asked questions about LNG and provide instructions on how to participate in the Commission's proceedings.

Finally, DCP has established an Internet Web site at *http://www.dom.com/about/gas-transmission/covepoint/pier_reinforcement/pdf/cove_point_pier_reinforcement.pdf* to provide the public with information about the Pier Reinforcement Project. DCP's Web site will be updated as the project review progresses. You may also use DCP's toll free telephone number, 1–888–330–2092.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16928 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–56–001]

American Municipal Power-Ohio, Inc. v. the Dayton Power & Light Company and PJM Interconnection, L.L.C.; Notice of Filing

July 16, 2008.

Take notice that on July 3, 2008, Dayton Power & Light Company filed an amendment to the stipulation and agreement of settlement.

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16929 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC08–7–000]

Constellation Energy Commodities Group, Inc.; Notice of Filing

July 15, 2008.

Take notice that on July 11, 2008, Constellation Energy Commodities Group, Inc. (Constellation) filed a request for appeal from North American Electric Reliability Corporation (NERC) Compliance Registry for the Texas Regional Entity Region. Constellation states that it is a power marketer, an active market participant in the market administered by the independent transmission system operator of the Electric Reliability Council of Texas (ERCOT), sells natural gas and other commodities in the United States and abroad, and holds interest in exploration and production companies, however it does not own any physical assets for the generation, transmission, or distribution of electric power and has no retail electric customers or service territories. Constellation and Power Resources, Ltd. (PRL) are parties to a Tolling Agreement in which Constellation agreed to be the Qualified Scheduling Entity for the PRL facility. Constellation asks that the Commission reverse the NERC's inclusion of its registration as a Generator 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 August 11, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16926 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1305–015]

Westar Generating, Inc.; Notice of Filing

July 16, 2008.

Take notice that on July 1, 2008, Westar Generating, Inc. filed a refund report, pursuant to Article IV of its Settlement Agreement.

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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. E8–16927 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–195–051; EL07–69–001]

Western Systems Power Pool; Western Systems Power Pool Agreement; Order Addressing Request for Reconsideration and Providing An Opportunity for Further Comments

Issued July 17, 2008.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On February 21, 2008, the Commission issued an order on the Western System Power Pool (WSPP) Agreement rates, finding that it is not just and reasonable to allow a seller to use the WSPP-wide ''up to'' demand charge as a ceiling rate in markets where the seller does not have market-based rate authority, unless such a seller can cost-justify the use of the ''up to'' demand charge based on its own fixed

costs.[1] On March 24, 2008, Arizona Public Service Company (APS) and Xcel Energy Services Inc. (Xcel) filed a joint request for reconsideration of the WSPP Agreement Order, requesting that the Commission adopt an alternative implementation of the WSPP Agreement Order by incorporating company-specific demand charge caps into the WSPP Agreement, either by cross-reference to a specific cost-based tariff, or by incorporation of company-specific rate schedules into the WSPP Agreement itself.[2] In this order, we address the request for reconsideration. We deny APS's and Xcel's request with respect to the cross-reference proposal, and provide an opportunity for WSPP and other interested parties to comment on the proposal for incorporating company-specific rate schedules, as discussed below.

I. Background

2. The WSPP Agreement was initially accepted by the Commission on a non-experimental basis in 1991,[3] and provided for flexible pricing for coordination sales and transmission services. In accepting the WSPP Agreement, the Commission rejected WSPP's proposed system of price caps based on the costs of its highest cost participants, and instead developed energy and transmission rate ceilings based on the costs of a subset (18 sellers) of the original parties to the WSPP Agreement.[4] The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's acceptance of the WSPP Agreement.

3. On June 21, 2007, the Commission instituted a section 206 proceeding to investigate whether the WSPP Agreement ceiling rate continued to be just and reasonable for a public utility seller in markets in which such seller was found to have or was presumed to have market power.[5] The Commission limited the investigation to: (1) the justness and reasonableness of WSPP Agreement cost-based ceiling rates for coordination energy sales by public utility sellers that are found to have, or are presumed to have, market power; and (2) if the existing WSPP Agreement rates are unjust and unreasonable for such sellers, how the Commission should establish a just and reasonable rate. The Commission sought comment on whether the Commission should set a just and reasonable ''up to'' rate based on: (1) Individual sellers'' costs; (2) a new agreement-wide ''up to'' rate based on the costs of a representative group of WSPP sellers (including how such agreement-wide rate should be calculated); or (3) or a different methodology.

4. In the February 21 Order, the Commission found that it is not just and reasonable to allow such a seller to continue to use the WSPP-wide ''up to'' demand charge as a ceiling rate unless such a seller can cost-justify the use of the ''up to'' demand charge based on its own fixed costs. Accordingly, the Commission directed all sellers under the WSPP Agreement that lack market-based rate authorization, or that have lost or relinquished their market-based rate authority (including those sellers currently using the WSPP Agreement as mitigation), who wish to continue transacting under the WSPP Agreement, to make a filing within 60 days of the date of issuance of that order providing cost justification[6] to demonstrate that use of the WSPP Agreement ''up to'' demand charge is just and reasonable for that particular seller. The Commission stated that, if a seller provides cost support demonstrating that the ''up to'' demand charge under the WSPP Agreement does not exceed the demand charge that the seller can cost-justify based on its own fixed costs, the seller may continue to use the WSPP Agreement.

Otherwise, such seller must file a separate stand-alone rate schedule, to be effective as of the date of the compliance filing that is cost-justified based on the individual seller's own costs. In the latter case, such seller could propose to use the non-rate terms and conditions of the WSPP Agreement, but would have to include those provisions as part of its stand-alone rate schedule.

II. Request for Reconsideration

5. APS and Xcel state that they are not seeking to reverse the Commission's ruling in the February 21 Order that sellers may not automatically rely upon the capped rates in the WSPP Agreement in markets where they do not have market-based rate authority. Rather, APS and Xcel request that the Commission reconsider how this ruling is to be implemented, so as to preserve the numerous benefits of transacting under the WSPP Agreement for those mitigated sellers that might require company-specific cost caps, and for their counterparties.

6. APS and Xcel argue that the February 21 Order eliminates the efficiencies inherent in the WSPP Agreement for certain WSPP members, because a seller that is unable to provide cost justification for the ''up-to'' demand charge included in the WSPP Agreement would be precluded from selling under the WSPP Agreement. APS and Xcel contend that, even though a seller could seek to mimic the benefits of the WSPP Agreement by filing a separate agreement that contains the same terms and conditions, the seller would still need to enter into bilateral agreements with each WSPP member with which it would want to transact. APS and Xcel argue that each of the counterparties would then need to familiarize itself with the terms and conditions of the seller's stand-alone rate schedule and confirm that the terms and conditions included in the stand-alone rate schedule mirror those contained in the WSPP Agreement. APS and Xcel further state that other process adjustments would be required, such as making advance bilateral arrangements prior to transactions taking place under a stand-alone rate schedule. They also contend that additional credit obligations would necessarily be required by stand-alone rate schedules, as well as possible additional collateral postings. APS and Xcel maintain that such additional steps could take more time than a potential buyer is willing to spend, which they argue could limit the number of potential trading partners.

7. APS and Xcel also argue that the Commission's remedy in the February 21 Order results in inefficient use of company and Commission resources and may result in inconsistent conditions of sales for power and energy. They contend that, in the event revisions are made to the terms and conditions of the WSPP Agreement, each WSPP member that utilizes those terms under a stand-alone rate schedule will be required to propose and file similar conforming revisions to keep the terms and conditions consistent. APS and Xcel further maintain that the Commission could be required to process and evaluate numerous rate

[1] *Western Sys. Power Pool*, 122 FERC ¶ 61,139 (2008) (February 21 Order).

[2] APS and Xcel describe this proposal as incorporating into the WSPP Agreement company-specific schedules of demand charge cost caps. Under APS and Xcel's second proposal, they would continue to use the non-rate terms and conditions of service under the WSPP Agreement.

[3] *Western Sys. Power Pool*, 55 FERC ¶ 61,099, *order on reh'g*, 55 FERC ¶ 61,495 (1992) (Initial Order), aff'd in relevant part and remanded in part sub nom. *Environmental Action and Consumer Federation of America* v. *FERC*, 996 F.2d 401 (DC Cir. 1992), *order on remand*, 66 FERC ¶ 61,201 (1994) (*Environmental Action*). Prior to 1991, the WSPP Agreement was used for three years on an experimental basis. See Western Sys. Power Pool, 50 FERC ¶ 61,339 (1990) (extending the initial two-year period for an additional year).

[4] *See* Initial Order, 55 FERC ¶ 61,099 at 61,321–25.

[5] *Western Sys. Power Pool*, 119 FERC ¶ 61,302 at P 9 (2007) (Order Instituting Hearing).

[6] The Commission stated that such changes should be filed pursuant to section 35.13 of the Commission's regulations. 18 CFR 35.13 (2008).

schedule changes. Additionally, they argue that there may be a lag between the effective date of the revisions to the WSPP Agreement and the effective date of revisions in a company's stand-alone rate schedule, which they claim will create confusion between counterparties. APS and Xcel contend that confusion may also result in transactions between parties if a WSPP member does not incorporate each and every revision to the WSPP Agreement in the company-specific stand-alone rate schedule. They explain that a prospective buyer may have the mistaken impression that the seller has implemented every term and condition of the WSPP Agreement in the stand-alone rate schedule, when, in fact, a seller has not proposed certain revisions.

8. APS and Xcel suggest what they describe as less procedurally complex, alternative approaches to implement the February 21 Order, including allowing cross-referencing of company-specific cost-based demand charges in a separate cost-based tariff. Alternatively, they suggest that the Commission could permit company-specific rate schedules to be incorporated into the WSPP Agreement itself.

III. Commission Determination

9. In the Order Instituting Hearing, the Commission emphasized that it was not investigating whether sellers that are found to have market power, or are presumed to have market power, may continue to use the non-rate terms and conditions under the WSPP Agreement; nor was the Commission investigating the transmission rates under the WSPP Agreement. Moreover, in the February 21 Order, the Commission emphasized that the finding reached would affect only a limited number of sellers. The Commission specifically stated that it was not requiring each WSPP member public utility to cost-justify the use of the WSPP Agreement demand charge or to file an individual cost-based rate. Instead, the Commission required only those jurisdictional sellers that lack market-based rate authorization, or those sellers that lose or relinquish their market-based rate authority (including those sellers currently using the WSPP Agreement as mitigation), to provide cost justification to demonstrate that use of the WSPP ''up to'' demand charge is just and reasonable for those particular sellers. Only if such sellers cannot justify the demand charge would they need to file a separate, stand-alone rate schedule that could mirror the non-rate terms and conditions of the WSPP Agreement. Thus, only a limited number of utilities are affected by the February 21 Order.[7]

10. The proposal by APS and Xcel to cross-reference company-specific cost-based demand charges in the WSPP Agreement is not consistent with Commission requirements. The Commission requires public utilities to post full and complete rate schedules and tariffs, rather than incorporating rates by reference.[8] Accordingly, we will deny APS' and Xcel's request for reconsideration on this proposal.

11. APS and Xcel alternatively propose that the Commission permit company-specific rates in rate schedules to be incorporated into the WSPP Agreement. They argue that the requirement in the February 21 Order that sellers who cannot justify the demand charge must file a separate, stand-alone rate schedule will reduce efficiencies for certain WSPP members and cause potential waste of Commission resources. APS and Xcel cite the need for additional credit checks and postings, as well as potential numerous rate schedule changes, as examples of requirements that will discourage potential trading partners from entering into agreements with WSPP members.

12. The proposal to allow the incorporation of company-specific rates in rate schedules in the WSPP Agreement would require amendment of the WSPP Agreement. To assist us in our analysis of this proposal, we will provide WSPP and any other interested party the opportunity to submit comments on the proposal to incorporate company-specific rate schedules into the WSPP Agreement within 30 days of the date of issuance of this order, with reply comments due 15 days thereafter.

The Commission orders:

(A) APS' and Xcel's request for reconsideration is hereby denied with respect to the proposal to cross-reference company-specific demand charges in the WSPP Agreement, as discussed in the body of this order.

(B) The Commission hereby provides WSPP and interested parties an opportunity to comment on the proposal to incorporate company-specific rate schedules in the WSPP Agreement within 30 days of the date of issuance of this order, and reply comments within 15 days, as discussed above.

(C) The Secretary is directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16914 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

[7] We note that two sellers have filed cost justification for continued use of the WSPP Agreement demand charge. Those filings are pending before the Commission. Three others, including APS, filed letters stating that they would not use the WSPP Agreement in balancing authority areas in which they are mitigated.

[8] *See* 18 CFR 35.1(a) (2008); *see also Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, at P 186 (2006).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2008–0213; FRL–8696–7]

Massachusetts Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Boston, Braintree, Cambridge, Chelsea, Everett, Hingham, Hull, Milton, Newton, Quincy, Watertown, Weymouth, and Winthrop.

ADDRESSES: *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 electronically in *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–0538. Fax number: (617) 918–1505. e-mail address: *Rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: This Notice of Determination is for the state waters of Boston, Braintree, Cambridge, Chelsea, Everett, Hingham, Hull, Milton, Newton, Quincy, Watertown, Weymouth, and Winthrop. The area of designation includes:

Waterbody/general area	Latitude	Longitude
Landside Town boundary between Revere and Winthrop	42°23′30″ N	70°58′50″ W
Offshore town boundary between Nahant, Revere, and Winthrop	42°24′28″ N	70°57′33″ W
Offshore town boundary between Nahant and Winthrop	42°23′13″ N	70°55′28″ W
Offshore town boundary between Nahant and Winthrop	42°23′04″ N	70°54′04″ W
Offshore town boundary between Nahant and Winthrop	42°23′32″ N	70°51′28″ W
Aid to Navigation RW "BG" Mo (A), 1.6nm NNE of the Graves	42°23′27" N	70°51′30" W
Aid to Navigation G "5" Fl G 4s WHISTLE, 0.8nm NE of the Graves	42°22′34″ N	70°51′29″ W
Aid to Navigation R "2" Fl R 4s BELL, Three & One-Half Fathom Ledge	42°21′04″ N	70°50′31″ W
Aid to Navigation G "1" Q G WHISTLE, Thieves Ledge	42°19′32″ N	70°49′51″ W
Offshore town boundary between Hull and Cohasset	42°18′34″ N	70°47′25″ W
Landside boundary between Hull and Cohasset	42°15′54″ N	70°49′34″ W

The landward boundaries of the NDA are:

Waterbody/general area	Latitude	Longitude
The Saratoga Street bridge between Winthrop and Boston	42°22′58″ N	70°59′40″ W
The railway bridge on the Chelsea River between Chelsea and Revere	42°24′06″ N	71°00′40″ W
The Amelia Earhart Dam on the Mystic River	42°23′42″ N	71°04′30″ W
The Watertown Dam on the Charles River	42°21′55″ N	71°11′22″ W
The Baker Dam on the Neponset River	42°16′15″ N	71°04′08″ W
The Shaw Street bridge on the Weymouth Fore River	42°13′20″ N	71°58′25″ W
Where Bridge Street crosses the Weymouth Back River between Weymouth and Hingham	42°14′50″ N	70°55′52″ W
Where Nantasket Avenue crosses the Weir River between Hingham and Hull	42°15′37″ N	70°50′41″ W

On June 6, 2008, notice was published that the Commonwealth of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Boston, Braintree, Cambridge, Chelsea, Everett, Hingham, Hull, Milton, Newton, Quincy, Watertown, Weymouth, and Winthrop. Three comments were received on this petition.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to EPA by the Commonwealth of Massachusetts certifies that there are 35 pumpout facilities located within the area. A list of the facilities, with phone numbers, locations, and hours of operation is appended at the end of this determination.

Based on the examination of the petition, its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN THE NO DISCHARGE AREA

Name	Location	Contact info.	Hours	Mean low water depth (ft)
Boston Harbor Shipyard and Marina	Boston	(617) 561–1400 VHF 9	7 a.m.–8 p.m. On call	*** 25
The Marina At Rowes Wharf	Boston	(617) 439–3131 VHF 9	8 a.m.–4 p.m. May 1–Oct 31	10
Boston Waterboat Marina	Boston	(617) 523–1027 VHF 9	7 a.m.–7 p.m. Call ahead	*** 5 to 25
Boston Yacht Haven	Boston	(617) 367–5050 VHF 9	8 a.m.–7 p.m.	10
Black Falcon Pier	Boston	(617) 946–4417	9 a.m.–5 p.m.	35

PUMPOUT FACILITIES WITHIN THE NO DISCHARGE AREA—Continued

Name	Location	Contact info.	Hours	Mean low water depth (ft)
**Boston Harbor Cruises	Boston	(617) 227–4321	6:30 a.m.–8:30 p.m. (weekdays). 10 a.m.–6:30 p.m. (weekends).	22
Boston Towing & Transportation	Boston	(617) 567–9100	24/7	***
*City of Boston	Boston	TBD	TBD	***
*Berth 10	Boston	(617) 918–6203	TBD	
**Mass Bays Lines	Boston	(617) 542–8000		
Charles River Yacht Club	Cambridge	(617) 354–8881 VHF 9	8 a.m.–8 p.m.	***
**Charles Riverboat Company	Cambridge	(617) 621–3001		
Constitution Marina	Charlestown	(617) 241–9818 VHF 69	9 a.m.–8 p.m. (summer) 9 a.m.-5 p.m. (winter)	30 ***
Mystic Marine	Charlestown	(617) 293–6247 VHF 72	7 a.m.–7 p.m. (Mon-Fri)	35 35
Shipyard Quarters Marina	Charlestown	(617) 242–2020 VHF 7, 9,16	8 a.m.–7 p.m.	*** 20
Charleston Pier 4	Charlestown	(617) 918–6231	Appointment Only	30
*Charlestown Pier 3	Charlestown	(617) 918–6201	TBD	
**Constellation Tug	Charlestown	(617) 561–0223	24/7	***
Marine At Admirals Hill	Chelsea	(617) 889–4002 VHF 9, 10	8 a.m.–5 p.m.	6
Dorchester Yacht Club	Dorchester	(617) 436–1002 VHF 9	8 a.m.–6 p.m.	7
Port Norfolk Yacht Club	Dorchester	(617) 822–3333 VHF 9, 11	24/7 self-service	7.5
Town of Hingham	Hingham	(781) 741–1450 VHF 12, 16	3 p.m.–7 p.m. (Tue, Thurs, Sat & Sun).	***
Town of Hull	Hull	(781) 925–0316 VHF 9,16	8 a.m.–4 p.m.	*** *TBD
Quincy Bay	Quincy	(617) 908–9757 VHF 9	8 a.m.–4 p.m. (weekend) High-tide (weekday)	*** ***
Bay Pointe Marina	Quincy	(617) 471–1777 VHF 9	Call ahead	8
Captain's Cove Marina	Quincy	(617) 328–3331 VHF 69	24/7	6
Marina Bay on Boston Harbor	Quincy	(617) 847–1800 VHF 10	7:30 a.m.–8 p.m.	***
Town River Yacht Club	Quincy	(617) 471–2716 VHF 71	Call ahead	35
**Harbor Express	Quincy	(617) 542–8000		
Watertown Yacht Club	Watertown	(617) 924–9848	8 a.m.–4 p.m. (Tue-Thur, Sat) 11 a.m.–7 p.m. (Fri)	6
Wessagussett Yacht Club	Weymouth	VHF 71	6 a.m.–8 p.m. (Mon-Fri) 9 a.m.–9 p.m. (Sat-Sun)	8
Town of Winthrop	Winthrop	(617) 839–4000 VHF 9,16	10 a.m.–8 p.m.	*** 8 to 30

* = Pending facilities.
** = Private commercial facilities.
*** = Not applicable.

Dated: July 9, 2008.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. E8–16981 Filed 7–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8696–8; Docket ID No. EPA–HQ–ORD–2006–0260]

Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an extension of the public comment period for the Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria.

SUMMARY: The EPA is announcing an extension of the public comment period for the draft document titled, ''Integrated Science Assessment for Sulfur Oxides—Health Criteria; Second External Review Draft'' (EPA 600/R–08/047). The draft document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development as part of the Agency's review of the primary (health-based) national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2).

EPA is releasing this draft document solely for the purpose of seeking public comment and for review by the Clean Air Scientific Advisory Committee (CASAC) (meeting date and location to be specified in a separate **Federal Register** notice). It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period began on May 30, 2008. This notice announces the extension of the deadline for public comment from July 25, 2008, to August 11, 2008. Comments must be received on or before August 11, 2008.

ADDRESSES: The ''Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea*. A limited number of CD–ROM or paper copies will be available. Contact Ms. Ellen Lorang by phone (919–541–2771), fax (919–541–5078), or e-mail (*lorang.ellen@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Draft Integrated Science Assessment for Sulfur Oxides—Health

Criteria'' (EPA/600/R–08/047) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Jee Young Kim, NCEA; telephone: 919–541–4157; facsimile: 919–541–2985; or e-mail: *kim.jee-young@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants that ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Sulfur oxides are one of six principal (or ''criteria'') pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA), formerly called an Air Quality Criteria Document (AQCD). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee mandated by the Clean Air Act and part of the EPA's Science Advisory Board (SAB), is charged with independent expert scientific review of EPA's draft ISAs.

On May 16, 2006 (71 FR 28023), EPA formally initiated its current review of the criteria for Sulfur Oxides, requesting the submission of recent scientific information on specified topics. A draft of EPA's ''Integrated Plan for Review of the Primary National Ambient Air Quality Standard for Sulfur Oxides'' was made available in February 2007 for public comment and was discussed by the CASAC via a publicly accessible teleconference consultation on May 11, 2007 (72 FR 20336). A review of the secondary (welfare-based) NAAQS for Sulfur Oxides is being conducted separately, in conjunction with the review of the secondary NAAQS for Oxides of Nitrogen. The plan was finalized and made available in October 2007 (*http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_pd.html*). In February 2007 (72 FR 6238), a workshop was held to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA and supplementary annexes for sulfur oxides. The first external review draft of this ISA was released for public comment and review by the CASAC on September 28, 2007 (72 FR 55207), and was reviewed by CASAC at a public meeting held on December 5–6, 2007 (72 FR 64216). The second draft document was released for CASAC and public review on May 30, 2008 (73 FR 31113); this draft document incorporated revisions to address comments raised by CASAC and the public. The Annexes to the draft ISA were made available for review on June 17, 2008. In response to requests from the public, EPA is extending the deadline for public comments from July 25 to August 11, 2008.

The second external review draft ISA for Sulfur Oxides will be discussed at a public meeting for review by CASAC, and public comments received will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2006–0260, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*.
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 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 Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0260. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly

available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: July 16, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–16979 Filed 7–23–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

July 16, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 25, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie Smith via e-mail at *PRA@fcc.gov* or at 202–418–0217. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA 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, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0760.

Title: Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order, and Fifth Report and Order.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 3–1,575 hours.

Frequency of Response: On occasion reporting requirement; recordkeeping requirement; and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. *See* 47 CFR § 69.727.

Total Annual Burden: 55,514 hours.

Total Annual Cost: $12,240.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Pursuant to FCC 07–159, respondents are no longer required to comply with 47 U.S.C. 272 structural safeguards. As such, the respondents must now file certifications with the Commission prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services that it provides service pursuant to that contract tariff to an unaffiliated customer. The certification requirement will ensure, as a result of the relief granted in FCC 07–159, equivalent protection in the event the BOCs provide in-region, long distance services directly and will be less burdensome and less costly for these providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16850 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 15, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 22, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1081.

Title: 47 CFR Sections 54.202, 54.209, Federal-State Joint Board on Universal Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 33 respondents; 262 responses.

Estimated Time per Response: 0.25—3 hours.

Obligation to Respond: Required to obtain or retain benefits, as per 47 CFR Sections 54.202 & 54.209.

Frequency of Response: Recordkeeping and annual reporting requirements.

Total Annual Burden: 360 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: On March 17, 2005, the Commission released the Eligible Telecommunications Carriers Designation Framework Report and Order, CC Docket No. 96–45, FCC 05–46. The information collection requirements ensure that eligible telecommunications carriers (ETCs) continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. Specifically, each ETC must submit, on an annual basis, the following information: (1) Progress reports on the ETC's five-year service quality improvement plan; (2) detailed information on any outage lasting at least 30 minutes; (3) the number of unfulfilled requests for service from potential customers within its service areas; (4) the number of complaints per 1,000 handsets or lines; (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules; (6) certification that the ETC is able to function in emergency situations; (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16851 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 17, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Leslie Haney, *Leslie.Haney@fcc.gov*, (202) 418–1002.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0809.

OMB Approval Date: December 31, 2007.

Expiration Date: January 31, 2011.

Title: Communications Assistance for Law Enforcement Act (CALEA).

Form No.: Not applicable.

Estimated Annual Burden: 350 responses; 17.93 hours per response; 6275 hours total per year.

Obligation to Respond: Mandatory for system security filings and voluntary for section 107(c) and 109(b) petitions.

Nature and Extent of Confidentiality: Neither CALEA system security filings nor section 107(c) and 109(b) petitions.

Needs and Uses: The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to create rules that regulate the conduct and recordkeeping of lawful electronic surveillance. CALEA was enacted in October 1994 to respond to rapid advances in telecommunications technology and eliminate obstacles faced by law enforcement personnel in conducting electronic surveillance. Section 105 of CALEA requires telecommunications carriers to protect against the unlawful interception of communications passing through their systems. Law enforcement officials use the information maintained by telecommunications carriers to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders. On May 12, 2006, the Commission released a Second Report and Order and Memorandum Opinion and Order in ET Docket No. 04–195, FCC 06–56, which became effective August 4, 2006, except for sections 1.20004 and 1.20005 of the Commission's rules, which became effective on February 12, 2007 when OMB approved their information collection requirements. The Second Report and Order established new guidelines for filing section 107(c) petitions, section 109(b) petitions, and monitoring reports (FCC Form 445). The monitoring reports were required on only one occasion and no renewal of that requirement is necessary. CALEA section 107(c)(1) permits a petitioner to apply for an extension of time, up to two years from the date that the petition is filed, and to come into compliance with a particular CALEA section 103 capability requirement. CALEA section 109(b) permits a telecommunication carrier covered by CALEA to file a petition with the FCC and an

application with the Department of Justice (DOJ) to request that DOJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. The Second Report and Order required several different collections of information: (a) Within 90 days of the effective date of the Second Report and Order, facilities based broadband Internet access and interconnected Voice over Interconnected Protocol (VoIP) providers newly identified in the First Report and Order in this proceeding were required to file system security statements under the Commission's rules (system security statements are currently approved under the existing OMB 3060–0809 information collection). (b) All telecommunications carriers, including broadband Internet access and interconnected VoIP providers, must file updates to their systems security statements on file with the Commission as their information changes. (c) Petitions filed under section 107(c), request for additional time to comply with CALEA; these provisions apply to all carriers subject to CALEA and are voluntary filings. (d) Section 109(b), request for reimbursement of CALEA; these provisions apply to all carriers subject to CALEA and are necessary for carriers seeking relief under this section of the CALEA statute.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16972 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 17, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Leslie Haney, *Leslie.Haney@fcc.gov*, (202) 418–1002.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0434.

OMB Approval Date: May 8, 2008.

Expiration Date: May 31, 2011.

Title: 47 CFR Section 90.20(e)(6), Stolen Vehicle Recovery System Requirements.

Form No.: Not applicable.

Estimated Annual Burden: 20 responses; 4 hours per response; 80 hours total per year.

Obligation to Respond: Required to Obtain or Retain Benefits.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with Federal stations in the fixed and mobile services. Applications for base stations operating on the 173.075 MHz frequency band shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located with 169 km (105 miles) of a TV channel 7 transmitter for potential interference to TV channel 7 viewers. Applicants will have to certify to certain requirements set out in rule Section 90.20(e)(6).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–16993 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–08–85–D (Auction 85); AU Docket No. 08–22; DA 08–460]

Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Announcement of Settlement Period Ending July 31, 2008; Comment Sought on Competitive Bidding Procedures for Auction 85

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of LPTV and TV Translator Digital Companion Channel construction permits, with bidding scheduled to commence on November 5, 2008 (Auction 85). This document also seeks comments on competitive bidding procedures for Auction 85, and announces a settlement period that ends on July 31, 2008.

DATES: Comments are due on or before July 31, 2008, and reply comments are due on or before August 7, 2008.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 08–22. Comments may be filed electronically using the Internet by accessing the Federal Communications Commission's (Commission's) Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/cgb/ecfs.* Filers should follow the instructions provided on the Web site for submitting comments. The Media and Wireless Telecommunications Bureaus (Bureaus) request that a copy of all comments and reply comments be submitted electronically to the following address: *auction85@fcc.gov.* In addition, comments and reply comments may be submitted by any of the following methods:

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureaus continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- *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 telephone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Lynne

Milne at 202–418–0660. For general auction questions: Debbie Smith or Linda Sanderson at 717–338–2868. *Media Bureau, Video Division:* For service rule questions: Shaun Maher at 202–418–2324 or Hossein Hashemzadeh at 202–418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 85 Comment Public Notice* released on July 17, 2008. The complete text of the *Auction 85 Comment Public Notice,* including attachments, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 85 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www/BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 08–460. The *Auction 85 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/85/,* or by using the search function on the ECFS Web page at *http://www/fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announce an auction of construction permits for Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels. This auction, which is designated Auction 85, is scheduled to commence on November 5, 2008. The Bureaus also seek comment on a variety of auction-specific procedures for Auction 85. The Bureaus also announce additional settlement period for applicants to use engineering solutions or settlements to resolve conflicts among their proposed stations.

II. Construction Permits in Auction 85

2. The construction permits to be auctioned are the subject of pending, mutually exclusive applications for the referenced broadcast services for which the Commission has not approved settlement agreements or engineering amendments. Participation in this auction will be limited to those applicants for construction permits identified in Attachment A of the *Auction 85 Comment Public Notice.* Applicants will be eligible to bid only on the corresponding construction permits listed in Attachment A.

3. Attachment A specifies the MX Groups accompanied by their respective minimum opening bids and upfront payments. In the event that the Commission approves any settlements pursuant to the settlement period announced in the *Auction 85 Comment Public Notice,* certain MX Groups may be modified or deleted. Any such MX Group changes will be announced in a future public notice.

4. Attachment A also lists the names of the applicants for construction permits in each MX Group. For each MX Group identified in Attachment A, competing applications were filed during the relevant filing period. All applications within an identified MX Group are directly mutually exclusive with one another. When two or more short-form applications (FCC Forms 175) are accepted for filing for a construction permit within the same MX Group in Auction 85, mutual exclusivity exists for auction purposes. Therefore, a single construction permit will be auctioned for each MX Group identified in Attachment A. Moreover, once mutual exclusivity exists for auction purposes, then, even if only one application for a particular construction permit in Auction 85 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction 85 and will remain subject to the Commission's anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid.

III. Settlement Period

5. The Bureaus announce a settlement window beginning with the release of the *Auction 85 Comment Public Notice* and ending at 6 p.m. Eastern Time (ET) on Thursday, July 31, 2008, for parties with proposals in the mutually exclusive (MX) groups listed in Attachment A to dismiss their proposals, enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions. The parties must submit their requests for dismissal or settlement agreements and/or engineering submissions by the deadline on July 31, 2008. After approval of the settlement or engineering submission, the proposed permittee(s) must submit an accurate and complete FCC Form 346 by the deadline subsequently specified by staff.

6. Applicants must ensure that their settlement agreements comply with the provisions of 47 U.S.C. 311(c), and the pertinent requirements of 47 CFR 73.3525, including the reimbursement restrictions. Parties must submit a copy of their settlement agreement and any ancillary agreement(s). Parties must submit a joint request for approval of such agreement. Parties must submit an affidavit of each party to the agreement setting forth: (a) The reasons why it is considered that such agreement is in the public interest; (b) A statement that its application was not filed for the purpose of reaching or carrying out such agreement; (c) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; (d) The exact nature and amount of any consideration paid or promised; (e) An itemized accounting of the expenses for which it seeks reimbursement; and (f) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

7. Applicants that request dismissal of their proposal or file an engineering amendment that removes the mutual exclusivity to their proposal without having entered a settlement agreement with another applicant must nevertheless submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal or engineering amendment. Applicants may make minor amendments to engineering proposals in order to resolve mutual exclusivity, but, according to 47 CFR 1.2105(b) and 73.3572(a)(1), applicants are not permitted to propose technical changes that would be considered a major change.

8. Anti-Collusion Rule. The prohibition of collusion set forth in 47 CFR 1.2105(c) became effective upon the short-form application filing deadline on June 30, 2006. However, the Commission's rules provide for a limited opportunity to settle, or otherwise resolve mutual exclusivities by means of engineering solutions, following the filing of the short-form applications. Specifically, parties in MX groups listed in Attachment A may discuss possible settlement agreements or technical solutions with other parties in their group during the limited period which commences with the release of the *Auction 85 Comment Public Notice*

and ends at 6 p.m. on July 31, 2008. Once the settlement period ends, the anti-collusion restrictions once again take effect. The Commission will proceed to auction with any competing mutually exclusive proposals that are not resolved by the parties during this settlement period.

9. Settlement agreements that are entered into in connection with this settlement period must be filed prior to 6 p.m. ET on July 31, 2008, as an attachment to the respective parties' FCC Forms 175 via the FCC Auction System. All parties to a settlement agreement must attach the requisite documents to their respective FCC Forms 175. Similarly, applicants proposing engineering amendments in connection with this settlement period must do so by amending the technical portion of their FCC Forms 175 via the FCC Auction System. Engineering amendments also must be submitted prior to 6 p.m. on July 31, 2008. Late-filed settlement agreements and engineering amendments will not be accepted. Applicants are strongly encouraged to file their settlement agreements and engineering amendments early and are responsible for allowing adequate time for filing. Information about accessing, viewing, completing amendments to, and filing settlement agreements for the FCC Form 175 is included in Attachment B of the *Auction 85 Comment Public Notice.*

IV. Bureaus Seek Comment on Auction Procedures

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

10. The Bureaus propose to auction all construction permits included in Auction 85 using the Commission's standard simultaneous multiple-round auction format. Auction 85 offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Round Structure

11. The Commission will conduct Auction 85 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

12. The auction will consist of sequential bidding rounds, each followed by the release of round results. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iii. Stopping Rule

13. For Auction 85, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if permitted).

14. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 85. (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if permitted), or places any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (b) Declare that the auction will end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) after which the auction will close. (c) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if permitted). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

15. The Bureaus propose to exercise these options only in certain circumstances. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

16. For Auction 85, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

17. A bidder's upfront payment is a refundable deposit to establish eligibility to bid on construction permits. The Bureaus propose the schedule of upfront payments for each construction permit as set forth in Attachment A of the *Auction 85 Comment Public Notice.* The Bureaus further propose that the amount of the upfront payment submitted by an applicant will determine the applicant's initial bidding eligibility in bidding units. The Bureaus seek comment on these proposals.

ii. Activity Rule

18. The Bureaus propose for Auction 85 the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on 100 percent of its bidding eligibility. Failure to maintain the required activity level will result in the

use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. A bidder's reduced eligibility for the next round will be equal to the bidder's activity in the current round. The Bureaus seek comment on this proposal.

19. Commenters that believe that this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggest alternative activity rules. Comments may wish to address the alternative of having more than one stage in the auction, with subsequent stages characterized by increasing activity requirements, for example, an 80 percent activity requirement in Stage One and a 95 percent activity requirement in Stage Two.

iii. Activity Rule Waivers and Reducing Eligibility

20. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

21. The Bureaus propose that each bidder in Auction 85 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

22. For Auction 85, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, and the number of potential over-the-air viewers covered by the proposed LPTV or TV translator broadcast facility. This proposed minimum opening bid amount for each construction permit available in Auction 85 is set forth in Attachment A of the *Auction 85 Comment Public Notice.* The Bureaus do not propose to establish a separate reserve price for the construction permits to be offered in Auction 85. The Bureaus seek comment on these proposals.

v. Bid Amounts

23. The Bureaus propose that, in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts (if the bidder has sufficient eligibility to place a bid on the particular construction permit). Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

24. For Auction 85, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent.

25. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit: (a) The amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors to be considered when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, and the bid increment percentage, and the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

vi. Provisionally Winning Bids

26. At the end of a bidding round, a provisionally winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit.

In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

vii. Bid Removal and Bid Withdrawal

27. For Auction 85, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

28. Where permitted in an auction, bid withdrawals provide a bidder with the option of removing bids placed in prior rounds that have become provisionally winning bids. If permitted, a bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. For Auction 85, the Bureaus propose to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. The Bureaus seek comment on this proposal.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

29. If withdrawals are allowed in this auction, the Bureaus seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between

the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.

30. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate construction permits offered, such as when few construction permits are offered, the construction permits offered are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining construction permits.

31. Applying the reasoning that a higher interim withdrawal payment percentage is appropriate when aggregation of construction permits is not expected, as with the construction permits subject to competitive bidding in Auction 85, if the Bureaus allow bid withdrawals in this auction, the Bureaus propose the maximum interim withdrawal payment allowed under the current rules. Specifically, the Bureaus propose to establish an interim bid withdrawal payment of twenty percent of the withdrawn bid for this auction. The Bureaus seek comment on this proposal.

ii. Additional Default Payment Percentage

32. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

33. For Auction 85, the Bureaus propose to establish an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

V. Due Diligence

34. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities they are seeking in this auction. Applicants are strongly encouraged to conduct their own research prior to Auction 85 in order to determine the existence of pending administrative or judicial proceedings that might affect their decisions regarding participation in the auction. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the digital companion channel facilities they are seeking. Participants in Auction 85 are strongly encouraged to continue such research throughout the auction. In addition, applicants should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

35. Potential bidders are reminded that digital companion channels are licensed on a secondary interference basis, and these channels may be displaced by full-power television stations. In addition, LPTV stations operating on Channels 52–69 may be displaced by new 700 MHz operations. Low power displacement applications (both analog and digital) have processing priority over all other low power applications, including digital companion channel applications. Displacement applications may be filed at any time. Therefore, the pending digital companion channel proposals in Auction 85 may be affected by newly-filed displacement applications. Bidders should continue to examine the effect that newly-filed displacement applications may have on their engineering proposals.

36. Potential bidders for any new television facility in Auction 85 are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities.

VI. Prohibition of Collusion

37. Applicants for Auction 85 are reminded that they remain subject to the Commission's anti-collusion rule until the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants listed on Attachment A of the *Auction 85 Comment Public Notice* regardless of whether such applicants become qualified bidders or actually bid.

38. Applicants also are reminded that, for purposes of this prohibition, an applicant is defined as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

39. Parties subject to the anti-collusion rule are prohibited from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii). Thus, competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect, bids or bidding strategy, which may include communications regarding the post-auction market structure.

40. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or post auction market structure may violate the anti-collusion rule. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, a qualified bidder's statement to the press that it intends to stop bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, a listed applicant's public

statement of intent not to participate in Auction 85 bidding, including a request to dismiss an application outside the settlement period, could also violate the rule.

41. The Bureaus also remind applicants with engineering proposals filed in the digital companion channel window that are mutually exclusive that they must not communicate indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization, a violation similarly could occur. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.

42. Applicants are reminded also that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

43. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by 47 CFR 1.65 to make such notification to the Commission immediately upon discovery.

44. Moreover, 47 CFR 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

45. Any report of a communication pursuant to 47 CFR 1.65 or 1.2105(c)(6) must be submitted by electronic mail to the following address: *auction85@fcc.gov.* The electronic mail report must include a subject or caption referring to Auction 85 and the name of the applicant.

46. Parties reporting communications pursuant to 47 CFR 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection pursuant to 47 CFR 0.459. Such parties are also encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E8–16964 Filed 7–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through October 31, 2011, the current PRA clearance for information collection requirements contained in the FTC rule on ''Labeling and Advertising of Home Insulation'' (''R-value Rule'' or ''Rule''). The current clearance expires on October 31, 2008.

DATES: Comments must be submitted on or before September 22, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''16 CFR Part 460: Paperwork Comment, FTC File No. R811001'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Room H–135 (Annex J), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible because U.S. postal mail in the Washington area and at the FTC is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at (*https://secure.commentworks.com/ftc-rvaluePRA*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at: (*https://secure.commentworks.com/ftc-rvaluePRA*). If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that website. The Commission will consider all comments that *www.regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

policy at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Bureau of Consumer Protection, (202) 326–2889, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the R-value Rule, 16 CFR Part 460 (OMB Control Number 3084-0109).

The FTC invites comments on: (1) whether the proposed collection of information required by the Rule is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated annual hours burden: 117,000 hours, rounded

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,615 installers who sell home insulation; (3) 125,000 new home builders/sellers of site-built homes and approximately 5,500 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. Based on past industry input, staff estimates that the test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. Their total annual testing burden is therefore approximately 30 hours.

Staff further estimates that most manufacturers require an average of approximately 20 hours per year regarding third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers x 20 hours) + (6 manufacturers x 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers x 1 hour).

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 1,520,000 retrofit insulations (an industry source's estimate) are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 50,667 hours (1,520,000 sales transactions x 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year. In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal — approximately 5 minutes per year per installer — for a total of approximately 135 hours.

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than 30 seconds per sales transaction is required to comply with this requirement, for a total annual burden of approximately 10,833 hours (an estimated 1.3 million new home sales[2] x 30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records regardless of the R-value Rule, staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis*. The time calculated for

[2] Based on U.S. census data from 2007. *See* (*http://www.census.gov/const/www/quarterly_starts_completions.pdf.*) Figures for new housing starts show a continuing decline from 2005, when the Commission last sought PRA clearance for the Rule, through 2007. *See id.*

disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 116,790 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 135 recordkeeping and 52,282 disclosure hours for installers; 10,833 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. Rounded to the nearest thousand, the total burden is 117,000 burden hours.

Estimated annual cost burden: $2,650,000, rounded to the nearest thousand (solely related to labor costs)

The total annual labor cost for the Rule's information collection requirements is $2,649,720, derived as follows: $690 for testing, based on 30 hours for manufacturers (30 hours x $23 per hour for skilled technical personnel); $3,705 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 285 hours (285 hours x $13 per hour for clerical personnel); $43,680 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours x $13 per hour for clerical personnel); and $2,601,645 for disclosure compliance by installers, new home sellers, and retailers (113,115 hours x $23 per hour for sales persons).

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

William Blumenthal

General Counsel

[FR Doc. E8–16898 Filed 7–23–08: 8:45 am]

Billing Code: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Evaluating Institutions Research Misconduct Education Efforts—OMB No. 0990–NEW–Office of Research Integrity.

Abstract: The Office of Research Integrity (ORI) is conducting this study of Research Misconduct Education in medical schools because these institutions are responsible for dissemination of information and guidelines to their faculty, staff, and students concerning the U.S. Public Health Service (PHS) Policies on Research Misconduct (42 CFR Part 93). The ORI review of institutional research misconduct policies, investigation reports, requests for technical assistance in handling allegations, and analyses of filings of the Annual Report on Possible Research Misconduct (PHS 6349) have raised questions about the level of knowledge that medical school faculty conducting research and responding to allegations, and the faculty's perception of their institution's commitment to dealing with research misconduct. This study is designed to evaluate the knowledge of medical school faculty members about their institution's policies and procedures, identify best practices and approaches used by medical institutions, which account for the most positive perceptions of commitment and the best understanding of research misconduct. Also, the study will identify the areas of responsibility and specify the activities that institutions perform in the process of educating their employees to the meaning of scientific misconduct at their institutions.

This will involve a one-time data collection effort. These researchers have been identified from a list of medical school principal investigators (PIs) that we obtained from the National Institutes of Health (NIH). All received NIH research projects awards in 2005 or 2006.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Recruit Letters	Researchers	10,754	1	15/60	896
Web Survey	Researchers	10,754	1	20/60	3,585
Total					4,481

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–16963 Filed 7–23–08; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''National Study of the Hospital Adverse Event Reporting Follow-Up Survey.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by September 22, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''National Study of the Hospital Adverse Event Reporting Follow-Up Survey''

This proposed information collection will conduct a survey similar to a previous AHRQ baseline survey conducted in 2005, which examined and characterized adverse event reporting in the Nation's hospitals (Farley DO, Haviland A, Champagne S, Jam AK, Battles JB, Munier WB, Loeb JM. Adverse Event Reporting Practices by U.S. Hospitals: Results of a National Survey, under review for publication). The follow-up survey will allow AHRQ to examine how hospitals' use of adverse event reporting systems has changed over time. The baseline survey was completed by 1,652 hospital risk managers selected from a nationally representative sample frame. The follow-up survey will consist of a random sample of 1,200 of the respondents to the baseline survey. We anticipate an 85% response rate for the follow-up survey, resulting in 1,020 completed questionnaires.

Similar to the baseline survey, the follow-up survey will ascertain whether hospitals collect information on adverse events, and how the information is stored. Information will also be collected regarding the hospital's case definition of a reportable event, whether information on the severity of the adverse event is collected, who might report this information and whether they can report to a system which is confidential and/or anonymous. The questionnaire also asks about the uses of the data that are collected, and whether information is used for purposes including analytic uses, personnel action, and improvement interventions. Finally, the questionnaire asks about the other sources of information that are useful to hospitals for patient safety-related interventions.

This project is being conducted pursuant to AHRQ's statutory mandates to (1) promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, including methods for measuring quality and strategies for improving quality (42 U.S.C. 299(b)(1)(F)) and (2) conduct and support research on health care and on systems for the delivery of such care, including activities with respect to quality measurement and improvement (42 U.S.C. 299a(a)(2)). In addition, Congress has, in report language, directed AHRQ to provide a report detailing the results of its efforts to reduce medical errors. See Report for the Departments of Labor, Health and Human Services, and Education, and related agencies Appropriation Bill for Fiscal Year 2002, S. Rep. 107–84, at 11 (2001).

This project is being funded by AHRQ and conducted by the RAND corporation as part of a contract under which RAND serves as the Patient Safety Evaluation center for AHRQ's patient safety initiative.

Method of Collection

The baseline survey and data collection procedures have been previously conducted and reviewed (under OMB Number 0935–0125, Expiration Date 07/31/2008). The follow-up survey will include an initial mailed survey with two waves of mailed follow-ups as needed, and a computer-Assisted Telephone Interviewing (CATI) survey follow-up for the remaining non-responders. The survey will be completed by one Risk Manager per hospital.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this information collection. The questionnaire is expected to require 25 minutes to complete, resulting in a total burden of 425 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents, which is estimated to be $11,518. The respondents will not incur any other costs beyond those associated with their time to participate.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Risk manager questionnaire	1,020	1	25/60	425
Total	1,020	NA	NA	425

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Risk manager questionnaire	1,020	425	$27.10	$11,518
Total	1,020	425	NA	11,518

*Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States 2006, "U.S. Department of Labor, Bureau of Labor Statistics."

Estimated Annual Costs to the Federal Government

The Agency is supporting the conduct of this survey and analysis of survey data as part of a contract with the RAND Corporation under which RAND serves as the Patient Safety Evaluation Center for AHRQ's patient safety initiative. The estimated cost for this work is $240,000, including $190,000 for data collection activities and $50,000 to design the study, analyze the data and report the findings.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 16, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–16874 Filed 7–23–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–08–0706]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Program of Cancer Registries Program Evaluation Instrument (NPCR–PEI)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is responsible for administering and monitoring the National Program of Cancer Registries (NPCR). As of 2008, CDC supports 45 states, two territories, the District of Columbia, and the Pacific Island Jurisdictions' unified Central Cancer Registry (CCR) for population-based cancer registries. CCRs are the foundation of cancer prevention and control, providing information from reporting jurisdictions to ensure that high-quality and timely cancer surveillance data are available to CDC.

CDC has collected program activity information from NPCR-funded registries on an annual basis. Beginning in 2009, CDC proposes to change the data collection frequency from annual to every other year, with data collection occurring only in odd-numbered years. Information will be collected electronically in 2009 and 2011 using the Web-based Program Evaluation Instrument (NPCR–PEI). The information will be used to evaluate various attributes of the registries funded by NPCR, monitor NPCR registries' progress towards program standards and objectives, compare an individual NPCR registry's progress towards standards with national program standards, and disseminate information about the NPCR. Continued clearance for a three-year period is requested.

There are no costs to respondents except their time. The total estimated annualized burden hours are 50.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
NPCR Grantees	33	1	1.5

Dated: July 15, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–16937 Filed 7–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–07BK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Transgender HIV Behavioral Survey (THBS)—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention request approval for a term of 2 years for a new project that will pilot a questionnaire and protocol for an HIV-related behavioral survey among transgender persons of color. The objectives of the pilot will be to assess the content of the questionnaire as well as the efficiency and feasibility of the methods for sampling and recruiting transgender persons.

The goal of the survey is to inform health departments, community based organizations, community planning groups and other stakeholders: (a) The prevalence of risk behaviors, (b) the prevalence of HIV testing and HIV infection; (c) the prevalence of the use of HIV prevention services; and, (d) identify met and unmet needs for HIV prevention services. This project addresses the goals of CDC's HIV Prevention Strategic Plan, specifically the goal of strengthening the national capacity to monitor the HIV epidemic to better direct and evaluate prevention efforts.

Data will be collected through in-person and computer-assisted self interviews conducted in 4 Metropolitan Statistical Areas (MSA) throughout the United States. The MSA chosen will be among those currently participating in the National HIV Behavioral Surveillance system (see **Federal Register** dated January 19, 2007: Vol. 72, No. 12, pages 2529–2530). A brief, in-person, computer-assisted screening interview will be used to determine eligibility for participation in the full survey. Data for the full survey will be collected using computer-assisted self interviews. Besides determining the content of the final survey instrument and the sampling methods, the data from the full survey will provide estimates of behavior related to the risk of HIV and other sexually transmitted diseases, prior testing for HIV, and use of HIV prevention services. No other federal agency systematically collects this type of information from transgender persons at risk for HIV infection. This data will have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that, in each year, THBS will involve eligibility screening of a total of 240 persons and will collect survey information from 200 eligible respondents. Thus, over the two year period 480 persons are estimated to complete the screener and 400 eligible respondents to complete the survey. Participation of respondents is voluntary and there is no cost to the respondents other than their time. The total annualized burden is 170 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Referred Individuals	Screener	240	1	5/60
Eligible Respondents	Survey	200	1	45/60

Dated: July 15, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers of Disease Control and Prevention.

[FR Doc. E8–16938 Filed 7–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-08–07BE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Research to Reduce Time to Treatment for Heart Attack/Myocardial Infarction for Rural American Indians/Alaska Natives (AI/AN)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Every year, approximately 1.1 million Americans have a first or recurrent heart attack/myocardial infarction (MI) and about one third of these will be fatal. Early recognition of MI by both the victim and bystanders followed by prompt cardiac emergency and advanced care has a direct effect on patient outcomes; the shorter the delay to treatment, the better the outcomes. Research indicates that public recognition of major MI symptoms, and the need for immediate action by calling 9–1–1, is poor and that patient delay accounts for most of the lag in

treatment. Additional data from the National MI Registry suggest that the greatest disparity for time to treatment exists among racial and ethnic minorities and that the American Indian/Alaska Native (AI/AN) group has the longest delay times.

CDC requests OMB approval to conduct a study to address gaps in knowledge about MI and to develop a key health message for reducing time to treatment in AI/AN populations. Respondents will be recruited from three regions of the U.S. Information about knowledge, attitudes and behaviors will be collected through interviews with key informants including medical care providers, tribal community leaders, and individual AI/AN community members. In addition, more detailed information will be collected through extended focus group discussions with AI/AN community members who have experienced an MI or who are considered at high risk for MI.

The information to be collected will be used to improve understanding of the barriers and facilitators that impact recognition of MI signs in AI/AN communities and decisions to seek treatment; to develop culturally appropriate health messages; and to identify effective message delivery methods. The messages will be consistent with those developed for the ''Act In Time'' action plan funded by HHS/National Heart, Lung and Blood Institute/National Heart Attack Alert Program (HHS/NHLBI/NHAP). The overall objective is to improve MI outcomes in AI/AN populations.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 233.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden (in hours)
Medical Providers	Interest Form	54	1	3/60
	Interview Guide for Providers	27	1	1
Tribal Community Leaders	Interest Form	30	1	3/60
	Interview Guide for Community Leaders	15	1	45/60
Individual Tribal Community Members	Interest Form	252	1	3/60
	Interview Guide for Individuals	126	1	45/60
AI/AN Community Members with Prior MI	Interest Form	12	1	3/60
	Discussion Guide for MI Group	8	1	5
AI/AN Community Members without Prior MI	Interest Form	12	1	3/60
	Discussion Guide for non-MI Group	8	1	5

Dated: July 16, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–16944 Filed 7–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–08AZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Health Marketing—New—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Service (CCHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Today, CDC is globally recognized for conducting research and investigations and for its action oriented approach. CDC applies research and findings to improve people's daily lives and responds to health emergencies—something that distinguishes CDC from its peer agencies.

CDC is committed to achieving true improvements in people's health. To do this, the agency is defining specific health protection goals to prioritize and focus its work and investments and measure progress.

It is imperative that CDC provide high-quality timely information and programs in the most effective ways to help people, families, and communities protect their health and safety. Through continuous consumer feedback, prevention research, and public health information technology, we identify and evaluate health needs and interests, translate science into actions to meet those needs, and engage the public in the excitement of discovery and the progress being made to improve the health of the Nation. In our outreach to partners, we build relationships that model shared learning, mutual trust, and diversity in points of view and sectors of society.

The National Center for Health Marketing (NCHM) of the Coordinating Center for Health Information and Service (CCHIS) was established to help ensure that health information, interventions, and programs at CDC are based on sound science, objectivity, and continuous customer input.

NCHM is requesting a 3-year approval for the generic concept of health marketing to provide feedback on the development, implementation and satisfaction regarding public health services, products, communication campaigns and information. The information will be collected using standard qualitative and quantitative methods such as interviews, focus groups, and panels, as well as questionnaires administered in person, by telephone, by mail, by email, and online. More specific types of studies may include: user experience and user-testing; concept/product/package development testing; brand positioning/identity research; customer satisfaction surveying; ethnography/observational studies; and mystery shopping. The data will be used to provide input to the

development, delivery and communication of public health services and information at CDC and to address emerging programmatic needs.

Every National Center and Office at CDC will have the opportunity to utilize this generic clearance. There is no cost to the respondents other than their time. The total estimated burden hours are 38,700.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
CDC Partners, Public Health Professionals, Health Care Professionals, General Public	86,000	1	27/60

Dated: July 16, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–16945 Filed 7–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH 099-A]

Revised Draft Document ''Asbestos Fibers and Other Elongated Mineral Particles: State of the Science and Roadmap for Research''

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Draft Document Available for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following revised draft document available for public comment entitled ''Asbestos Fibers and Other Elongated Mineral Particles: State of the Science and Roadmap for Research.'' The document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/099-A/*.

Public Comment Period: July 24, 2008 through September 30, 2008.

Status: Written comments may be mailed to the attention of Diane Miller, NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS-C34, Cincinnati, Ohio 45226, telephone (513) 533–8450, facsimile (513) 533–8285. Comments may also be submitted by e-mail to *nioshdocket@cdc.gov*. All material submitted to the Agency should reference the NIOSH Docket number 099-A. All electronic comments should be formatted as Microsoft Word.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To obtain comments from the public on the revised draft document entitled, ''Asbestos Fibers and Other Elongated Mineral Particles: State of the Science and Roadmap for Research,'' referred to as *Roadmap*. Asbestos has been a highly visible issue in public health for over three decades. Many advances have been made in the scientific understanding of worker health effects from exposure to asbestos and other elongated mineral particles (EMPs), and it is now well documented that fibers of asbestos minerals, when inhaled, can cause serious diseases in exposed workers. Yet, many questions and areas of scientific uncertainty remain.

Background: As the Federal agency responsible for conducting research and making recommendations for the prevention of worker injury and illness, NIOSH is undertaking a reappraisal of how to ensure appropriate protection of workers from exposure to asbestos fibers and other EMPs. NIOSH prepared a first draft of the document ''Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research,'' and invited comments at a public meeting, from the Internet, and from selected expert peer reviewers on the occupational health issues identified and the framework for research. As a result of comments received during the public and expert peer review process, NIOSH has substantially revised the earlier draft and is now inviting comments on a revised draft of the document with the new title ''Asbestos Fibers and Other Elongated Mineral Particles: State of the Science and Roadmap for Research.'' The previous draft, public comments, peer review comments, and the responses to peer reviewers' comments on the previous draft can be found at *http://www.cdc.gov/niosh/docket/NIOSHdocket0099.html*.

The purpose of the revised draft *Roadmap* is to outline major areas of controversy and to recommend a research agenda that can serve as a guide for the development of specific research programs within and across disciplines. The intended goal is to provide answers to current scientific questions, reduce scientific uncertainties, and provide a sound scientific foundation for future policy development so that optimal health protection can be assured.

NIOSH is seeking comments on the scope and information used to support the development of a research framework for asbestos fibers and other EMPs. Of special interest are comments on the following revisions to the draft document:

1. A discussion of particle characteristics (e.g., dimension, chemistry) and their potential influence on biological responses (Sections 1.6.1, 1.6.2, 1.6.3, and 1.6.4).
2. Toxicological research with EMPs (Section 2.2).
3. Epidemiological studies of workers exposed to EMPs (Section 2.3.3).
4. Capabilities and limitations of analytical instruments used to identify EMPs (Section 2.4.2).

Also of special interest are comments on the entirely new content in the document:

1. A rephrasing of the NIOSH recommended exposure limit (REL) for asbestos and related EMPs (Section 1.8.2).
2. The inclusion of ''How the proposed research could lead to the development of improved public health policies for asbestos and other EMPs'' (Section 2.5).
3. Clinical issues (Section 1.4).
4. Recommendations for clinical research (Section 2.3.4).

NIOSH continues to be interested in available and forthcoming research results that can help answer the questions set forth in the *Roadmap*, as well as information on existing

workplace exposure data, health effects, and control technologies.

Submitted comments on the revised draft *Roadmap* should indicate the pertinent page(s) and line(s) in the draft document being addressed.

Contact Person for Technical Information: Paul Middendorf, Office of the Director, NIOSH, CDC, telephone (513) 533–8606, e-mail *pmiddendorf@cdc.gov*.

Dated: July 16, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–16946 Filed 7–23–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Respiratory Syncytial Virus Vaccine or Therapeutic

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide exclusive license to practice the inventions embodied in the patent referred to below to Trellis Bioscience, Inc., having a place of business in South San Francisco, CA. The patent rights in these inventions have been assigned to the government of the United States of America. The patent(s) to be licensed are: U.S. Patent Application 11/139,372 entitled ''Compositions and Methods for Modulating RSV Infection and Immunity,'' priority date 10.18.2000, and all related foreign patent applications. CDC Technology ID No. I–022–00.

Status: Published.

Priority Date: 10.18.2000

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Technology: This technology provides new methods for prevention and treatment of respiratory syncytial virus (RSV) infection.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, J.D., Ph.D., Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8600; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 17, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–16943 Filed 7–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Demonstration and Dissemination Projects.

Date: August 19, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge Two, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Holly K. Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *krullh@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 17, 2008.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–16841 Filed 7–23–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–2005–0005]

Z–RIN 1660–ZA01

Disaster Assistance Directorate Policy Numbers 9100.1 and 9523.1 Snow Assistance and Severe Winter Storm Policy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed policy and opportunity for comment.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to revise its Snow Assistance and Severe Winter Storm Policy. The current policy provides the procedures and requirements for FEMA in making recommendations to the President for either a declaration of emergency or a major disaster resulting from a snowstorm. This proposed policy would maintain the current policy requirement that a county experience a ''record or near-record'' snowfall, but also would require that the State meet the requirements of a major disaster declaration. It would stipulate that the Governor must direct execution of the State emergency plan and the State must demonstrate that the capabilities of the State to effectively respond to the event are or will be exceeded. States and communities requesting aid also would be required to submit an estimate of eligible public assistance costs (estimate of public assistance divided by county and State populations, respectively), including snow assistance costs for a 48-hour period that meet or exceed the county and statewide per capita cost threshold. These proposed criteria are used by FEMA solely for consideration

in making recommendations to the President and do not bind the ability of the President, in his discretion, to make declarations of emergencies or major disasters.

DATES: FEMA invites comments on the proposed policy and will accept comments until August 25, 2008.

ADDRESSES: You may submit comments, identified by Docket Number FEMA–2005–0005, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FEMA-RULES@dhs.gov. Include Docket Number FEMA–2005–0005 in the subject line of the message.

Facsimile: 866–466–5370.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket number (if available). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

For detailed instructions on submitting comments, *see* the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James A. Walke, Chief, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Room 406D, Washington, DC 20472, 202–646–2751; (facsimile) 202–646–3304; or (e-mail) *James.Walke@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

The Federal Emergency Management Agency (FEMA) invites any interested persons to participate in the revision of this policy by submitting written data, views, or arguments on all aspects of the proposed policy. FEMA also invites comments that relate to the economic effects that might result from the implementation of the revised proposed snow policy. Comments should refer to a specific portion or paragraph of the notice, explain your reason for any recommended change, and include data, information, or authority that support your recommended change. *See* **ADDRESSES** above for information on how to submit comments.

II. Background and Purpose

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (Stafford Act), FEMA coordinates Federal actions to provide supplemental aid to States and communities to assist in the response and recovery from emergencies and major disasters. *See also* 44 CFR 206.62. Federal assistance authorized by a Presidential emergency or major disaster declaration provides immediate and short-term assistance that is essential to save lives, protect property, and safeguard the public health and safety. FEMA makes recommendations to the President for use in his determination in granting an emergency or major disaster declaration. On December 28, 1999, FEMA issued its snow assistance policy describing FEMA's procedures for evaluating requests for emergency and major disaster declarations due to snowfall. The Snow Assistance Policy, along with other FEMA Public Assistance Program policies, is available on FEMA's Web site at *http://www.fema.gov/government/grant/pa/9523_1.shtm*. The parameters set forth in the Snow Assistance Policy are used by FEMA solely for consideration in making recommendations to the President under the Stafford Act and do not bind the ability of the President, in his discretion, to make declarations of emergencies or major disasters.

FEMA proposes to revise its snow assistance policy. Under the Stafford Act, FEMA is required to provide public notice and an opportunity to comment before amending any policy that could result in a significant reduction of assistance. 42 U.S.C. 5165c.

FEMA's current snow assistance policy evaluates requests for snow assistance under the criteria for an ''emergency'' declaration under 44 CFR 206.35, rather than as a request for a ''major disaster'' declaration under 44 CFR 206.36. However, the Stafford Act (42 U.S.C. 5122) and FEMA regulations (44 CFR 206.2(a)(17)) include ''snowstorms'' in the definition of ''major disasters.'' This proposed policy would require snowstorm events to be evaluated under the criteria for ''major disaster'' under 44 CFR 206.36, consistent with the Stafford Act and FEMA regulations.

Under FEMA regulations, FEMA may find that a State or community is eligible for assistance from FEMA for an emergency or major disaster declaration resulting from snow or blizzard conditions only where the storm results in ''record or near record'' snowfall for that area, as determined by official government records (*see* 44 CFR 206.227). Under the current policy, for a county to be eligible for an emergency declaration due to snow, at least one National Oceanic and Atmospheric Administration (NOAA) station within that county must receive a snowfall at a historical record or a near-record (within 10 percent of record) snowfall level. Because most counties have multiple NOAA stations, the station with the lowest historical snowfall record is compared to the highest event snowfall to determine the county's eligibility for a snow assistance emergency declaration.

FEMA's proposed policy would retain the requirement that a State demonstrate record or near-record snowfall in the county seeking relief (though FEMA proposes to change the method for measuring this requirement as discussed below). Under this proposed policy, the Governor must direct activation of the State emergency plan and the State must demonstrate that the capabilities of the State to effectively respond to the event are or will be exceeded.

States also would be required to submit an estimate of eligible public assistance costs (estimate of public assistance divided by county and State populations, respectively) including snow assistance costs for a 48-hour period that meet or exceed the county and statewide per capita cost threshold. Snow assistance costs will be included for only those areas that meet the record, near-record, or contiguous county criteria of this proposed policy. For major disaster declarations, per capita costs are used as an indicator of the State or county capability of responding to the event. This information is not required under the current snow policy. While this requirement would be new to FEMA's snow policy, an estimate of damages is a normal requirement for all States requesting a major disaster declaration (*see* 44 CFR 206.36 and 44 CFR 206.48). Also, criteria for evaluating event snowfall data would change to require comparison with the NOAA station that has the highest historical record to determine a true record or near-record snowfall event.

Over the last nine snow seasons (1998–1999 through 2006–2007), FEMA has processed an average of six State requests for snow assistance each season, and FEMA has received no indication from those applications that its documentation requirements are overly burdensome. Indeed, the quantity and quality of the information provided in declarations requests that FEMA receives from most States well exceed the information requirements under the current policy.

III. Discussion of Comments Received on September 17, 2002 Proposed Revision

On September 17, 2002, FEMA published for public comment a proposed revision to the snow assistance policy in the **Federal Register** at 67 FR 58608. The most significant change proposed was the addition of ''local impact'' criteria to the requirement that a county have a record or near-record snowfall event as the primary consideration for making a recommendation for a snow assistance emergency declaration. The ''local impacts'' as proposed included: activation of the National Guard for search and rescue operations, opening of multiple shelters for stranded motorists and victims of power outages, closure of interstate and State highways for over 48 hours, power outages across the affected area exceeding 48 hours, closure of local government offices exceeding 48 hours, and the State's need for a significant level of Federal equipment and labor to address the impacts of the event. Another proposed revision required the use of the highest-record snowfall in the county to determine whether the county met the record or near-record criteria for a county snow assistance designation.

FEMA received five letters commenting on the September 2002 proposed revision to the snow policy, including comments from the National Emergency Management Association, State Emergency Management Offices, and a local government. FEMA has analyzed those comments and determined that the ''local impact'' criteria should be removed from the proposed policy. The following is a summary of the comments received and responses to those comments.

Impact criteria

One commenter cited our ''local impact'' criteria and policy statement that FEMA would require evidence of ''some'' of the local impacts before making a recommendation to the President to declare a snow assistance emergency. The commenter stated that the term ''some'' is too general and ambiguous, and clarification is needed to provide guidance so that the States can decide whether the necessary criteria have been met to warrant a request for Federal assistance.

Two commenters stated that the requirement that the National Guard be activated for search and rescue was too restrictive and that the ''local impact'' criteria under the snow assistance policy should be flexible to allow for State and local search and rescue operations to satisfy the criteria as well.

One commenter stated that the requirement for having to open multiple shelters was too restrictive, because in some low-population areas only one shelter may be required.

One commenter stated that the requirement that power outages exceed 48 hours in order to satisfy the ''local impact'' criteria was unrealistic, as a power outage of less than 48 hours may have a significant impact in some areas.

Another commenter stated that the requirement that local government offices be closed in excess of 48 hours in order to satisfy the ''local impact'' criteria is not realistic for all States.

One commenter stated that the requirement for a significant level of Federal equipment and labor to address the impacts of the event was too restrictive, as Federal equipment is limited in some States.

FEMA agrees with all of the comments related to the ''local impact'' criteria. Furthermore, FEMA has determined that, with the exception of ''record'' or ''near record'' snowfall that is required by 44 CFR 206.227, the criteria for major disaster declarations for snowstorms should be consistent with all other events. As there are no specific types of local impacts required under the Stafford Act or FEMA's regulations for other types of events, the criteria should be removed from the proposed policy.

National Oceanic and Atmospheric Administration (NOAA) Snow Data

There were several comments concerning the use of snowfall data from NOAA. One commenter stated that the National Weather Service (NWS) does not have knowledge of other monitoring stations that NOAA uses to identify historic records. Also, NWS uses a single measurement for a county or some measurements at stations that are different from other NOAA stations.

The National Climatic Data Center (NCDC), which is a part of NOAA, provides historical 1-, 2-, and 3-day snowfall data from measurements made by observers who are part of the NWS airport stations and the NWS Cooperative Network. These observers are trained by NOAA experts on proper snowfall measurement techniques and provided with the proper equipment and guidelines for ensuring accurate observations. NOAA collects and distributes snowfall data from these trained, equipped, and supervised observers (NCDC published data).

In response to these comments and to maintain consistency of evaluation data to determine when a snowstorm reaches record or near-record proportions, FEMA agreed and changed the language of the policy to make clear that FEMA would accept event and historical snowfall data from the NCDC.

One commenter recommended that the definition of ''record snowfall'' should be expanded to indicate that FEMA consider the record snowfall for each county. This commenter also requested that FEMA define how and where the data are obtained. Another commenter stated that NOAA's NCDC records identify ''observed max'' at stations and NOAA's NWS statistical analyses show 10-, 25-, 50-, and 100-year snowfall values that exceed the ''observed max'' amount. In light of these different methodologies, clarification of what constituted a ''record snowfall'' was requested.

In this proposed policy, FEMA expands the definition of ''record snowfall'' to indicate that a record snowfall is considered for each county or other political subdivision of the State. In addition, FEMA has restricted the sources of current event snowfall to include the NCDC published data and NWS Cooperative Network Station data. FEMA also identified the NCDC Web site where historic record data for 1-, 2-, and 3-day snowfall is obtained. The Web site uses 1-, 2-, and 3-day record snowfalls and does not use ''observed max'' to identify record snowfall. FEMA does not consider the statistical analyses for 10-, 25-, 50-, and 100-year snowfalls as record snowfall data and they are not identified in the policy as such.

Another commenter suggested that FEMA should allow for the use of Geographic Information Systems (GIS) comparisons of data as well as the proposed methodology. The commenter stated that GIS mapping programs can provide a more accurate representation when historic data sites are different from current sites or when Federal data are incomplete.

In response to the suggested use of GIS for comparison of snowfall data, FEMA proposes the use only of data provided by the NCDC and NWS Cooperative Network Stations for making comparisons to historic snowfall values. This ensures a consistent

approach to the collection of snowfall data and application of the snow assistance policy. However, the State and FEMA may use GIS technology to represent the snowfall data graphically to simplify the data comparison process. This is not specifically stated in the policy, but the use of GIS technology is not prohibited.

One commenter disagreed with the restriction against using snow data from a reporting station in another State. FEMA agrees that this restriction was unnecessary and revised the policy to remove the restriction.

One commenter expressed concern with the time it takes NOAA to certify snowfall data. The commenter stated that this process takes at least one to three months and only a few sites provide snowfall totals immediately. Our experience with NOAA through multiple snow emergencies is that NOAA provides timely snowfall data very soon after snowstorms. In addition, FEMA will accept snowfall data obtained from NWS Cooperative Network monitoring stations, which is typically available during and immediately after a snowfall event. FEMA has not experienced any delays in processing snow emergency requests due to a lack of or untimely snowfall data from NOAA or NWS.

One commenter stated that the size of geographic areas in Western and Northern tier States may skew the data that are reported for a county or borough, thereby affecting the level of assistance that is provided. Also, the State of Alaska specifically noted that the size and distance between its political jurisdictions makes it unrealistic to use snow data from adjoining jurisdictions. FEMA acknowledges that variations in geographic areas and features make it difficult in some instances to compare current and historic snowfall values from different locations within a county or other political jurisdiction. Monitoring stations are frequently located in or near populated areas, therefore the use of historical data from such stations should aid in determining the severity and magnitude of the snowstorm event on the given population in the impacted jurisdiction. FEMA asserts that its methodology and criteria are fair and equitable. FEMA also asserts that this system can be applied consistently throughout the country.

Contiguous Counties

Several comments were made regarding the definition and designation of ''contiguous counties.'' One commenter stated that the definition of contiguous county was not consistent with the definition in FEMA Policy 9122.1 ''Designation of Counties for Major Disaster Declarations.'' FEMA Policy 9122.1 has since been amended by a memorandum dated September 6, 2005, and that definition of contiguous county is no longer in effect. However, FEMA agreed that the definition should be clarified. In the proposed policy, a contiguous county is defined as ''a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.''

Long-Term Snowfall and Eligible Time Period

Several commenters remarked that the policy did not address snow events that were more than three days in duration, and that the assistance period was too short to address these types of events. FEMA agreed that snowfall events that were more than three days duration could create emergency conditions. Therefore, FEMA expanded the definition of ''record snowfall'' to include snowfall that occurs over a period exceeding three consecutive days. These events will be evaluated on a case-by-case basis.

One commenter suggested extending the assistance period from two to three days, with a two-day extension under extreme circumstances. One commenter also stated that 48 hours was not long enough to address lake effect snows. Another commenter stated that if a storm continues beyond the 48-hour period, the cost for snow removal beyond the 48-hour period should be part of the consideration for determining the assistance period. One commenter suggested that the financial impacts to a local or State agency should be taken into consideration by FEMA, especially if a local or State agency can show a serious financial burden. One commenter disagreed with the provision that snow removal costs not be included when evaluating a request for a major disaster declaration. The commenter stated that these are extraordinary costs to State and local budgets and excluding these costs would likely limit such declarations to ice storms.

FEMA believes that the 48-hour assistance period, with an extension to 72 hours, is an appropriate assistance period for both short and long duration snowfalls. The assistance is intended for opening emergency access and to help restore critical services. It is not intended to cover the entire cost or even a significant portion of the cost of long-term snow removal operations.

FEMA recognizes that snow removal operations can create significant financial impacts at the State and local level. While our assistance is generally financial in nature, FEMA intends that this assistance would open emergency access on roads and to critical facilities and would address the public health and safety threats created by a snowstorm. Snowstorms are events that are foreseen and budgeted for in advance. Therefore, FEMA assistance is not appropriate when the impacts are only financial in nature. Also, to consider the financial impacts of a snowstorm alone could lead to inconsistent implementation of the policy. State and local budgets and budgetary processes vary significantly making it difficult to judge financial impact on a consistently fair basis. In this proposed policy, snow removal costs in counties that meet the criteria of this policy are included as eligible costs when evaluating major disaster requests.

Eligible Work

FEMA also received several comments stating that the definition of ''snow removal assistance'' needs to be more flexible to allow for opening emergency access into hospitals, nursing homes, schools, transportation facilities, and other critical facilities. Other comments stated that the policy required clarification of what work is eligible for FEMA snow assistance during the eligible time period.

Note that the use of an eligible time period in both the current policy and the proposed policy is intended to eliminate the requirement of determining where and how much snow removal is eligible. In the proposed policy, FEMA uses the term ''snow assistance'' rather than ''snow removal assistance'' because it incorporates all activities under Category B, emergency protective measures, as described in the Public Assistance Guide, FEMA 322, (*http://www.fema.gov/pdf/government/grant/pa/pagprnt_071905.pdf*) that are related to the event. FEMA broadened the definition of ''snow assistance'' to include snow removal, salting, sanding, snow dumps, and de-icing from other facilities in addition to roads. The intent of the proposed policy was not to restrict eligibility for FEMA snow assistance only to roads. The new definition is intended to clarify that all snow removal related activities from facilities that are the responsibility of an eligible applicant and that are performed within the assistance time

period are eligible for FEMA snow assistance.

One commenter requested that FEMA define the width of roadway that is eligible for snow removal. Several comments requested that FEMA broaden the definition of ''snow removal assistance'' to define when loading and hauling of snow and the creation of snow dumps are eligible for snow assistance. The eligible time period eliminates the need to define an eligible road width as an applicant has the discretion to perform any snow removal it deems necessary within its selected assistance period. FEMA expanded the examples of the kinds of work eligible for snow assistance to include the use of snow dumps.

One commenter requested that FEMA more clearly articulate the kind of assistance provided for snow removal when an area does not meet the record, near-record, or contiguous county designation criteria as described in paragraph (b) of the policy. FEMA added clarification stating that, generally, snow removal that is necessary to perform otherwise eligible emergency work, such as debris removal or power restoration, is eligible for snow assistance provided there is a Presidentially-declared major disaster.

Eligible Applicants

One commenter requested that FEMA clearly define all applicants that are eligible for snow assistance. FEMA revised the policy to state that all eligible applicants as defined in 44 CFR 206.222 are eligible for snow assistance.

Severe Winter Storm

One commenter stated that our definition of ''severe winter storm'' appears to require that snow, ice, high winds, and blizzard conditions must all occur in one storm. The commenter requested that FEMA revise the definition of ''severe winter storm'' so that only one or more of those conditions need occur, not all. FEMA agreed and revised the definition accordingly.

Inconsistency Between Fire and Snow Declarations

One commenter stated that the requirements for fire and snow emergency declarations are not consistent with each other. The commenter stated that FEMA does not place as stringent requirements for Fire Management Assistance Grants as FEMA does for Public Assistance snow assistance grants. The commenter cited that the ''local impact'' criteria in the proposed snow policy are not requirements for fire assistance. Also, the commenter stated that an emergency or disaster declaration is required for snow assistance, but is not required for fire assistance.

Under Executive Order 12148 as amended, the President delegated the authority to FEMA to provide disaster assistance grants under section 420 (Fire Management Assistance) of the Stafford Act. As such, a Presidential emergency or disaster declaration is not required for the provision of assistance in response to fires. FEMA has not been delegated such authority for the provision of snow assistance, and, therefore a Presidential declaration is required. As described in our regulations for fire management assistance, 44 CFR part 204, the assistance for fire management is approved when the determination is made by FEMA that a fire or fire complex threatens such destruction as would constitute a major disaster. Fire and snow events are two different types of events, which have different types of impacts. FEMA treats each type of event consistently in that the impacts of each type of event are evaluated as criteria for the provision of assistance. Furthermore, FEMA has removed the ''local impact'' criteria from the proposed policy such that the criteria used to evaluate snowstorm events, in addition to record or near-record snowfall, are consistent with other types of events.

Snow Assistance as a Major Disaster Declaration

In the past, FEMA has evaluated snow assistance requests by the Governor of a State under the provisions of 44 CFR 206.35. Since snowstorms are defined as ''major disasters'' in section 102(2) of the Stafford Act, FEMA has determined that these events must be evaluated under 44 CFR 206.36 before FEMA may provide snow assistance.

IV. Regulatory Requirements

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this notice of proposed policy under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, a significant regulatory action is subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health and 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 budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice is a significant regulatory action, but not an economically significant regulatory action within the definition of section 3(f) of Executive Order 12866, and it adheres to the principles of the Executive Order. OMB has reviewed this notice of proposed policy under the provisions of the Executive Order.

Under the Stafford Act and 44 CFR 206.227, FEMA provides Federal assistance for emergency or major disaster declarations based on snow or blizzard conditions for cases of record or near-record snowstorms. The current snow assistance policy evaluates States' requests for snow assistance under the provisions of 44 CFR 206.35. This proposed policy is intended to make snow assistance consistent with the Stafford Act, which defines ''snowstorms'' as major disaster events under 42 U.S.C. 5122. *See also*, 44 CFR 206.2 (a)(17)(defining ''major disaster'' to include snow storms). This proposed policy would require snowstorm events to be evaluated under the provisions of 44 CFR 206.36.

It has been FEMA's practice to recommend an emergency declaration, pursuant to 44 CFR 206.35, when a county has experienced a record or near-record snowstorm that is of such severity and magnitude that effective response is beyond the capability of the State and the affected local governments. In view of the fact that snowstorms are among the named natural events in the definition of a ''major disaster'' in section 102(2) of the Stafford Act, 42 U.S.C. 5122, this proposed policy would require that, in addition to record or near-record snowfall, applicants for snow assistance meet the criteria for a major disaster declaration in sections 44 CFR 206.36 and 44 CFR 206.48.

Over the last nine snow seasons (1998/1999 through 2006/2007) FEMA has provided a total of $478,868,342 of snow assistance under 55 Presidential declarations for an average of approximately $53 million per year.

FEMA assessed the potential economic impact of the proposed policy and concluded that public assistance funding will be reduced by approximately 10 percent per year under this proposed policy.

FEMA has considered a number of alternatives to this proposed policy. One alternative would be to continue with the current policy, which provides an emergency declaration for snow assistance. That alternative is not consistent with the intent of the Stafford Act, which defines a snowstorm as a ''major disaster.'' Continuing with the current snow policy does not provide a method to evaluate snowfall data as consistently as the proposed policy. By continuing to compare a county's highest snowfall event data with the data from the NOAA station with the lowest historical record snowfall, there would be no change in the amount of assistance provided.

Another alternative would be to adopt only ''local impact'' criteria, but not require that States and counties meet the per capita cost criteria (public assistance divided by State or county population) for a major disaster declaration. If only ''local impact'' criteria were required, the same level of financial assistance as the current policy would be provided under the proposed policy.

Another alternative would be to eliminate snowstorms as a natural disaster event qualifying for a Presidential disaster declaration and, therefore, for our grant assistance. Such an alternative would be contrary to the Stafford Act, which includes ''snowstorms'' in its definition of types of major disasters eligible for FEMA assistance. As a result, States and counties would not receive snow assistance from FEMA as intended in the Stafford Act.

FEMA believes that the best alternative is presented in this proposed policy, which includes per capita cost criteria and changing the criteria for evaluating event snowfall to comparison with the NWS station with the highest historical record in a county to determine a true record or near-record snowfall event. Based on our analysis, public assistance would be reduced by an average of 10 percent, or $5.3 million per year.

Accordingly, FEMA invites comments on the proposed Snow Assistance and Severe Winter Storm Policy.

The policy reads as follows:

Text of Proposed Policy

Proposed Snow Assistance and Severe Winter Storm Policy

(a) Definitions.

Contiguous County means a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

Core County means a county that has a record or near-record snowfall with public assistance costs that exceed the per capita threshold defined in FEMA Policy 9122.1 ''Designation of Counties for Major Disaster Declarations'' and is designated for snow assistance under a major disaster declaration.

Incident Period means the time span during which the disaster-causing incident occurs, *e.g.*, approximately 6:00 p.m., January 5, 2007, through 8:00 a.m., January 7, 2007.

Near-Record Snowfall means a snowfall that approaches, but does not meet or exceed, the historical record snowfall within a county as published by the National Climatic Data Center (NCDC). FEMA generally considers snowfall within ten percent of the record amount to be a near-record snowfall.

Record Snowfall means a snowfall that meets or exceeds the highest record snowfall within a county over a 1-, 2-, 3-day or longer period of time, as published by the NCDC.

Snow Assistance means assistance for all eligible activities under Category B, emergency protective measures (*see* Categories of Work in the Public Assistance Guide, FEMA 322, *http://www.fema.gov/pdf/government/grant/pa/pagprnt_071905.pdf*) related to a snowstorm, including snow removal, de-icing, salting, snow dumps, and sanding of roads and other eligible facilities, as well as search and rescue, sheltering, and other emergency protective measures.

Snowstorm means an event in which a State has record or near record snowfall in one or more counties, as determined by paragraph (e), and that overwhelms the capability of the affected State and local governments to respond to the event. While snowstorms will normally only receive Snow Assistance, other categories of supplemental Federal assistance may be designated for a snowstorm declaration as warranted.

Severe Winter Storm means an event that occurs during the winter season that includes one or more of the following conditions: Snow, ice, high winds, blizzard conditions, and other wintry conditions; and that causes substantial physical damage or loss to improved property.

(b) Snowstorm Declaration Criteria.

FEMA will only recommend a major disaster declaration to the President in response to a snowstorm; an emergency declaration request in response to a snowstorm will not be recommended to the President. However, the criteria listed in this policy are solely for use by the Agency in making recommendations to the President and in no manner restrict the ability of the President, in his/her discretion, to declare emergencies or major disasters pursuant to the Stafford Act.

A snowstorm that meets the following criteria may be designated a major disaster under 44 CFR 206.36. In addition to the following county criteria, a State must also meet the statewide per capita cost threshold required by 44 CFR 206.48(a)(1) based on eligible public assistance costs including the snow assistance costs it incurs within the prescribed 48 hour period.

Each county included in a Governor's request for a declaration must have a record or near-record snowfall, or meet the contiguous county criteria described in this policy, have estimated public assistance costs including snow assistance costs within a 48 hour period that equal or exceed the county per capita cost threshold required for a major disaster declaration, which is published annually in the **Federal Register** (*see* 71 FR 59514, on October 10, 2006) and the State must demonstrate that the capabilities of the State to effectively respond to the event are or will be exceeded. An applicant may select a 48 hour period for estimating purposes, but use a different 48 hour period when submitting actual costs.

(c) Snowstorm Declaration Requests.

(1) Within 30-days following a record snowstorm, the Governor shall submit a request for a snowstorm major disaster declaration that meets the requirements of 44 CFR 206.36, 44 CFR 206.48, and this policy. A Governor's request for a snowstorm major disaster declaration shall cite ''Snowstorm'' as the incident type in the Governor's request, as will the Regional Administrator's Regional Disaster Summary and the Regional Analysis and Recommendation. Furthermore, the Governor's request shall provide the following information:

(i) Overview of the event;

(ii) Core and contiguous counties for which a snowstorm declaration is requested;

(iii) Date(s) of snowfall;

(iv) For each requested county, copies of event daily snowfall totals from NWS stations and historical record snowfall data from the NCDC to maintain consistency of evaluation data to determine when a snowstorm reaches record or near-record proportions;

(v) A description of State and local resources activated in response to the event;

(vi) The extent of search and rescue operations performed and impacts to State and local government operations;

(vii) Any other localized impacts as described in 44 CFR 206.48(a)(2);

(viii) Total estimated eligible costs for each core and contiguous county, including the estimated snow assistance costs for a 48 hour period. The county per capita estimate of costs, which includes the estimated eligible costs incurred by State agencies working within each county, must meet or exceed the county per capita cost threshold; and

(ix) Total estimated statewide costs, which include the total of estimated eligible costs for all counties requested. The per capita estimate of statewide costs must meet the statewide per capita cost threshold in 44 CFR 206.48(a)(1).

(2) The Regional Administrator of FEMA will evaluate the Governor's request and make appropriate recommendations to the FEMA Assistant Administrator of the Disaster Assistance Directorate.

(i) The Regional Disaster Summary (*see* Template at *http://declarations.fema.net/*) should include:

(A) An overview of the snowstorm;

(B) A summary of statewide and localized impacts;

(C) A summary of State and local resources dedicated to alleviating the emergency, to include shelter information;

(D) A comparison of actual event snowfall to the highest historical record snowfall for each county for which snow assistance is requested; and

(E) An identification of any extenuating circumstances.

(ii) The Regional Analysis and Recommendation (*see* Template at *http://declarations.fema.net/*) should include:

(A) The recommended Incident Period of the event, and the Categories of Work recommended (*see* Public Assistance Guide, FEMA 322, page 44 (*http://www.fema.gov/pdf/government/grant/pa/pagprnt_071905.pdf*);

(B) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan, and that the Governor's request meets all statutory requirements;

(C) An evaluation of statewide and localized impacts;

(D) The type of assistance needed;

(E) A recommendation of a major disaster declaration for a State that met the required statewide per capita cost threshold and the other criteria; or a recommendation of denial of a major disaster declaration for a State that did not meet the required statewide per capita cost threshold or the other criteria; and

(F) A list of the recommended counties that met the requirements for a major disaster declaration for snow assistance under this policy.

(3) The FEMA Administrator may add counties to a snowstorm declaration after the President has declared a major disaster. Requests for additional counties must meet the criteria for designation under paragraph (b) of this policy and include the documentation required under paragraph (c) of this policy. Such requests may be made within 30-days of the declaration, or the end of the incident period, whichever is later.

(d) Use of Official Government Snowfall Data.

(1) Current Snowfall Data.

A Governor's request for a snowstorm major disaster declaration shall include snowfall amounts measured and published by the National Oceanic and Atmospheric Administration (NOAA) for the current snowstorm for each county for which snow assistance is requested. The NCDC, which is a part of NOAA, publishes snowfall data from measurements made by observers who are part of the National Weather Service (NWS), airport stations, and the NWS Cooperative Network. FEMA will rely primarily on snowfall measurements taken at NWS Cooperative Network Stations, but in cases where Cooperative Network Stations do not exist or do not report, FEMA will accept snowfall measurements from other sources that have been verified by the NCDC or NWS. A Governor's request for a snowstorm major disaster declaration must include copies of all NCDC or NWS Cooperative Network Station reports published for the counties for which snow assistance is requested.

(2) Historical Snowfall Records. FEMA accepts historical snowfall records maintained by NCDC. NCDC's Web site (*see http://www.ncdc.noaa.gov/oa/ncdc.html*) provides snowfall amounts recorded at NWS Cooperative Network Stations for single and multiple day events. If NCDC data are not available or do not reflect snowfall records through the previous year's snow season, such data should be obtained from regional NWS offices and provided as part of the Regional Analysis and Recommendation.

(e) Determining Record and Near-Record Snowfalls.

The following criteria will be used to determine record or near-record snowfalls:

(1) Current snowfall amounts under paragraph (d)(1) of this policy will be compared with the historical record snowfall amounts under paragraph (d)(2) of this policy for a like number of days without regard for the month in which the record snowfall or current event occurred.

(2) For multiple day snowstorms, a county that meets the 1-day record or near-record requirement on any one day, or the 2-day record or near-record over two consecutive days, or the 3-day record or near-record over three consecutive days, *etc.*, will have met the record or near-record criteria for that county.

(3) When data from multiple NWS Cooperative Network Stations exist within a county, the highest current event snowfall reported by the NWS within that county will be compared to the highest historical snowfall record for that county.

(4) For counties that do not have NCDC or NWS historical record snowfall data, the historical record from the nearest NWS Cooperative Network Station in an adjacent county, even if located in an adjacent State, may be used for determining historical snowfall records.

(5) If current event snowfall data under paragraph (d)(1) of this policy are not available from the NWS for a county, the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent State, may be used.

(6) A county that does not receive a record or near-record snowfall, but is contiguous to a county that does receive a record or near-record snowfall, may be designated for snow assistance if the contiguous county has current event snowfall under paragraph (d)(1) of this policy that meets or exceeds the current event snowfall under paragraph (d)(1) of this policy of a county that has a record or near-record snowfall. This comparison is based on the highest current event snowfall received by each county as reported by the NWS.

(7) Counties that experience snowfalls occurring over a period exceeding three consecutive days that do not reach record or near-record snowfalls during a three-day period, and for which there are no historical snowfall records for a period exceeding three days with NCDC or NWS, will be considered for a major

disaster declaration on a case-by-case basis.

(f) Eligible Period of Assistance.

(1) Snow assistance is available for all ''eligible costs'' incurred over a continuous 48-hour period. Applicants may select a 48-hour period during which the highest eligible costs were incurred. Once costs are submitted for the chosen 48-hour period that selected 48-hour period cannot be changed.

(2) The FEMA Assistant Administrator of the Disaster Assistance Directorate may extend the eligible time period of assistance by 24 hours in counties where snowfall quantities greatly exceed record amounts. To be eligible for a time extension, the current event snowfall must exceed the historical record snowfall by at least 50 percent. The time period will be extended 24 hours for each designated county that meets this 50 percent criterion.

(3) Different applicants in the same designated county may use different 48-hour periods. However, all agencies or instrumentalities of a local government must use the same 48-hour time period.

(4) A State agency, such as a Department of Transportation, that provides snow assistance in multiple locations throughout the State, may use different 48-hour periods.

(g) Eligible Applicants.

Entities that meet the applicant eligibility, 44 CFR 206.222, and are performing work that meets the requirements of general work eligibility, 44 CFR 206.223, are eligible for snow assistance.

(h) Eligible Work.

Eligible work, under Category B, emergency protective measures, as described in the Public Assistance Guide, FEMA 322, (*http://www.fema.gov/pdf/government/grant/pa/pagprnt_071905.pdf*) includes snow removal, snow dumps, de-icing, salting, and sanding of roads and other facilities essential to eliminate or lessen immediate threats to life, public health, and safety. In addition, activities related to the snowstorm such as search and rescue, sheltering, and other emergency protective measures are eligible work. Other categories of work may be eligible under a snowstorm declaration where appropriate.

(i) Eligible Costs.

FEMA will provide snow assistance during the 48-hour period for the overtime but not the straight time cost of the applicant's regularly-employed personnel. The cost of contract labor (including temporary hires who perform eligible emergency work) is an eligible cost, as are the costs for equipment and materials used in the performance of eligible work. If applicants award contracts for periods greater than the eligible period of assistance, eligible funding will be limited to the costs incurred during the eligible period of assistance. The same pro-rata method for calculating eligible funding applies to all other eligible snow assistance costs.

(j) Insurance. It is the responsibility of an applicant to notify the Regional Administrator of FEMA, through the State, of any actual or anticipated proceeds from insurance covering snow removal or other snow assistance costs. FEMA will deduct the actual or anticipated amount of snow removal or other snow assistance cost insurance proceeds from policies in force at the time of the snowfall.

(k) Severe Winter Storm Declarations.

(1) Severe Winter Storm declaration requests must satisfy the requirements of 44 CFR 206.36 and 44 CFR 206.48, but are not required to meet the record or near record snowfall requirements described under paragraph (b) of this policy. FEMA will not include snow removal costs when calculating the per capita cost impacts for a severe winter storm declaration unless the county qualifies for snow assistance under paragraph (b) of this policy.

(2) In a major disaster declaration for a Severe Winter Storm, snow removal costs will not be eligible for FEMA assistance if the county does not meet the requirements for snow assistance under paragraph (b) of this policy. A limited level of snow removal incidental to disaster response may be eligible for assistance. Generally, snow removal that is necessary to perform otherwise eligible emergency work is eligible. For example, snow removal necessary to access debris or to repair downed power lines is eligible, while normal clearance of snow from roads is not eligible.

(3) A Governor's request for a major disaster declaration as a result of a Severe Winter Storm shall cite ''Severe Winter Storm'' as the incident type in the Governor's request as will the Regional Administrator's Regional Disaster Summary and the Regional Analysis and Recommendation.

(4) The procedures for requesting and evaluating a Severe Winter Storm declaration will follow the same process as any request for a major disaster declaration as outlined in 44 CFR part 206 subpart B.

(5) The evaluation of current and historical snowfall data for the designation of snow assistance, if warranted, will follow the same procedures as described for snow assistance in this policy.

Dated: July 11, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–16866 Filed 7–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0009]

National Disaster Housing Strategy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the National Disaster Housing Strategy (NDHS). The NDHS is intended to serve two purposes. It describes how we as a Nation currently provide housing to those affected by disasters, and charts the new direction that our disaster housing efforts must take if we are to better meet the emergent needs of disaster victims and communities.

DATES: Comments must be received by September 22, 2008.

ADDRESSES: The NDHS is available online at *http://www.regulations.gov.* You may also view a hard copy of the NDHS at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472. You may submit comments on the NDHS, identified by Docket ID FEMA–2008–0009, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID FEMA–2008–0009 in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read

the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.* Due to the large number of comments expected, FEMA urges commenters to use the form provided in the docket when submitting their comments. To comment using the form provided, please open the form in Word, enter your comments to the form and save it as a new file on your computer. When submitting your comment on *http://www.regulations.gov*, below the box provided for written comments is a link for ''Attachments''. Browse for the file saved to your computer then upload the form.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Laura McClure, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–4389.

SUPPLEMENTARY INFORMATION: The National Disaster Housing Strategy (NDHS), serves as a guide to how the Nation currently provides housing after a disaster, and sets a course for improving the methods in which we can provide housing to meet the emergent needs of disaster victims and communities. As requested by Congress in Section 683 of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109–295, the NDHS is intended to begin a long-term effort to build on current strengths and encourage all involved to work collaboratively and seek innovative housing solutions. It intends to establish a strong foundation based on clear roles and responsibilities, key principles to guide national efforts, a joint planning process to build baseline capabilities, and additional resources to better prepare for an impending or emergent event.

The NDHS promotes a national housing effort that engages all levels of government and the private sector to collectively meet the urgent housing needs of disaster victims and to enable individuals, households and communities to rebuild and restore their way of life following a disaster. A key concept introduced in the NDHS is the National Disaster Housing Task Force to bring together experts and policymakers whose efforts would be dedicated exclusively to the disaster housing issue. The NDHS draws on best practices and lessons learned over the years to identify actions that can be taken to improve disaster housing assistance. This effort began with realigning roles and responsibilities, renewing our focus on planning, building baseline capabilities, and providing a broader range of flexible disaster housing options. The NDHS outlines a vision, supported by specific goals, that will point the Nation in a new direction to meet the disaster housing needs of individuals and communities going forward. FEMA solicits comments on the draft NDHS which is available in Docket ID FEMA–2008–0009 at *http://www.regulations.gov.*

Although it is not currently open for comment, FEMA has also provided a copy of the 2008 Disaster Housing Plan (Housing Plan) in the docket to aid the public in its review of the NDHS. The Housing Plan describes FEMA's approach to working with Federal partners, States, territories, local communities, and individual disaster victims to meet disaster housing needs during the 2008 hurricane season. Key concepts in the Housing Plan are further defined in the NDHS.

Authority: 42 U.S.C. 5121–5207; 6 U.S.C. 772.

Dated: July 18, 2008.

Harvey E. Johnson, Jr.,

Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. E8–17004 Filed 7–23–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5194–N–12]

Notice of Proposed Information Collection: Comment Request; Moving to Work Demonstration: Elements for the Annual MTW Plans and Annual MTW Reports

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 22, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048 (this is not a toll-free number), or e-mail Ms. Deitzer at *Lillian.I.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–708–0713 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Moving to Work Demonstration: Elements for the Annual MTW Plans and Annual MTW Reports.

OMB Control Number: 2577–0216.

Description of the need for the information and proposed use. This collection of information is a revision to the information collection under Paperwork Reduction Act Submission (PRA) 2577–0216 under ICR Reference Number 200604–2577–001 that was approved by OMB on June 8, 2006. This revision to the information collection makes certain changes to the approved information collection in order to make it consistent with the Standard MTW

Agreement that HUD conveyed to MTW agencies on January 4, 2008.

Agency form number, if applicable: HUD–50900.

Members of affected public: Public housing agencies that participate in the Moving to Work demonstration.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 29 PHAs that submit annual MTW Plans and Reports. The total reporting burden is 2,349 hours.

Status of the proposed information collection: Revision to currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 17, 2008.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. E8–16897 Filed 7–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–47]

Annual Progress Reports for Empowerment Zones

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Designees submit annual progress reports on each project specified in Implementation Plans. Designees may respond to warning letters to avoid decertification. The designees' annual progress reports provide management information for HUD and status reporting for Congress.

DATES: *Comments Due Date:* August 25, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0148) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Annual Progress Reports for Empowerment Zones.

OMB Approval Number: 2506–0148.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

Designees submit annual progress reports on each project specified in Implementation Plans. Designees may respond to warning letters to avoid decertification. The designees' annual progress reports provide management information for HUD and status reporting for Congress.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	75	1		16.4		1,230

Total Estimated Burden Hours: 1,230.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 17, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–16910 Filed 7–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–46]

HUD-Administered Small Cities Program Performance Assessment Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information collection is the Annual Performance Report on financial and physical development progress for HUD-administered Small Cities Program funds for non-entitlement Community Development Block Grant, (CDBG) funding for CDBG funds awarded prior to FY2000 in the State of New York.

DATES: *Comments Due Date:* August 25, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0020) and should be sent to: HUD Desk Officer,

Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: HUD-Administered Small Cities Program Performance Assessment Report.

OMB Approval Number: 2506–0020.

Form Numbers: HUD–4052.

Description of the Need for the Information and its Proposed Use:

Information collection is the Annual Performance Report on financial and physical development progress for HUD-administered Small Cities Program funds for non-entitlement Community Development Block Grant, (CDBG) funding for CDBG funds awarded prior to FY2000 in the State of New York.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	65	1		4		260

Total Estimated Burden Hours: 260.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 17, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–16909 Filed 7–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–48]

Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is used to verify that a mortgage has been properly recorded and is eligible for FHA mortgage insurance.

DATES: *Comments Due Date:* August 25, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0404) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Requirements for Single Family Mortgage Instruments.

OMB Approval Number: 2502–0404.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

This information is used to verify that a mortgage has been properly recorded and is eligible for FHA mortgage Insurance.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	9,000	1		.5		4,500

Total Estimated Burden Hours: 4,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 17, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–16912 Filed 7–23–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2008–N0176] [91200–1231–00AP–M4]

Proposed Information Collection; OMB Control Number 1018–0010; Mourning Dove Call Count Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2008. We 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.

DATES: You must send your comments on or before September 22, 2008.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES), or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703-712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a - 754j-2) designate the Department of the Interior as the primary agency responsible for (1) wise management of migratory bird populations frequenting the United States and (2) setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The Mourning Dove Call Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between the Service and State wildlife agencies and local and tribal biologists. Each spring, State, Service, local, and tribal biologists conduct the survey to provide the necessary data to determine the population status of the mourning dove. If this survey were not conducted, we would not be able to determine the population status of mourning doves prior to setting regulations. The Service and the States use the survey results to:

(1) develop annual regulations for hunting mourning doves,

(2) plan and evaluate dove management programs, and

(3) provide specific information necessary for dove research.

II. Data

OMB Control Number: 1018-0010.

Title: Mourning Dove Call Count Survey.

Service Form Number(s): 3-159.

Type of Request: Extension of currently approved collection.

Affected Public: State, local, and tribal employees.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Annual Number of Responses: 1,062.

Estimated Total Annual Burden Hours: 2,799 hours. We believe 80 percent of the respondents will enter data electronically, with an average reporting burden of 2.67 hours per respondent. For all others, we estimate the reporting burden to be 2.5 hours per respondent.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. 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.

Dated: June 26, 2008

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E8–16899 Filed 7–23–08; 8:45 am

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-MB-2008-N0175] [91200-1231-00AP-M4]

Proposed Information Collection; OMB Control Number 1018-0019; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2008. We 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.

DATES: You must send comments on or before September 22, 2008.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703-712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a - 754j-2) designate the Department of the Interior as the primary agency responsible for (1) wise management of migratory bird populations frequenting the United States and (2) setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. State, Federal, Provincial, local, and tribal conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that are not sufficiently restrictive, which could cause harm to the woodcock population, or too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting. The Service, State conservation agencies, university associates, and other interested parties use the data for various research and management projects.

II. Data

OMB Control Number: 1018-0019.

Title: North American Woodcock Singing Ground Survey.

Service Form Number(s): 3-156.

Type of Request: Extension of currently approved collection.

Affected Public: State, Provincial, local, and tribal employees.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Annual Number of Responses: 750.

Estimated Total Annual Burden Hours: 571 hours. We believe 70 percent of the respondents (525 persons) will enter data electronically, with an average reporting burden of 0.8 hours per respondent. For all other respondents, we estimate the reporting burden to be 0.67 hours per respondent.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. 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.

Dated: June 26, 2008

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E8–16900 Filed 7–23–08; 8:45 am

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2008–N0125, 64411–9821–0031–W3]

Notice of Availability, Draft Restoration Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability, Draft Restoration Plan and Environmental Assessment.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as the natural resource trustee, announces the release for public review of the Draft Natural Resource Damage Restoration Plan and Environmental Assessment (RP/EA) for the Cherokee County Superfund Site, Cherokee County, Kansas. The Draft RP/EA presents the Service's overall approach and preferred restoration alternatives that compensate for impacts to natural resources caused by the release of hazardous substances from former mining activities in Cherokee County, Kansas.

DATES: Written comments must be submitted on or before August 25, 2008.

ADDRESSES: Copies of the RP/EA are available for review during office hours at U.S. Fish and Wildlife Service, Kansas Ecological Services Field Office, 2609 Anderson Avenue, Manhattan, Kansas 66502, and online at *http://mountain-prairie.fws.gov/nrda/CherokeeCounty.htm.* Requests for copies of the RP/EA may be made to the same address. Copies also will be available at the Columbus, Baxter Springs, and Galena libraries in Cherokee County. Interested members of the public are invited to review and comment on the RP/EA. Written comments will be considered and addressed in the final RP/EA at the conclusion of the 30-day public comment period. Written comments or materials regarding the RP/EA should be sent to the Kansas Ecological Services Field Office at the address given above.

Public Comment Availability: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Gibran Suleiman, U.S. Fish and Wildlife Service, Kansas Ecological Services Field Office, 2609 Anderson Avenue, Manhattan, Kansas 66502. Interested parties also may call 785–539–3474 ext. 114, or e-mail *Gibran_Suleiman@fws.gov* for further information.

SUPPLEMENTARY INFORMATION:

Background

The DOI, acting as natural resource Trustee, reached two different natural resource damages settlements with Eagle-Picher Industries, Inc. (Eagle-Picher) in 1991 and LTV Corporation (LTV) in 1986 for natural resource

injuries associated with the discharge of hazardous substances at various locations at former mining sites within the Cherokee County Superfund Site, Cherokee County, Kansas. The discharge of hazardous substances injured Service trust resources (migratory birds and threatened and endangered species). The natural resource damages settlement funds compensate for injuries at former lead and zinc mines within the Cherokee County Superfund site and must be used to restore, rehabilitate, replace, and/or to acquire equivalent natural resources at various locations within Cherokee County, Kansas, and in certain cases, in surrounding counties (e.g., Crawford, Montgomery, and Labette Counties).

The RP/EA describes several habitat restoration alternatives. The preferred alternatives consist of, but are not limited to, preservation of high quality prairies and riparian areas, stream sediments dredging, and in some cases, restoration of prairies that have been compromised in some fashion, primarily in Cherokee County. These actions will compensate for injuries to natural resources, including migratory birds, and migratory bird habitat and Threatened and Endangered Species, and are outlined and described in full in the EA/RP.

Author

The primary author of this notice is Gibran Suleiman, U.S. Fish and Wildlife Service, Kansas Ecological Services Field Office, 2609 Anderson Avenue, Manhattan, Kansas 66502.

Authority: The authority for this action is the Clean Water Act (33 U.S.C. 1251, *et seq.*), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11, and the National Environmental Policy Act. It is intended to describe and evaluate the Trustee's proposal to restore natural resources injured by the release of hazardous materials at the Cherokee County Superfund Site.

Dated: May 15, 2008.

Gary G. Mowad,

Acting Regional Director, Denver, Colorado.

[FR Doc. E8–16936 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–08–0777–XX]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting dates are August 20–21, 2008, at the Marriott Courtyard, 5151 Journal Center Boulevard, Albuquerque, New Mexico. The public comment period is scheduled for Wednesday, August 20, 2008, from 6–7 p.m. at the Marriott Courtyard. On Thursday, August 21, 2008, the meeting is scheduled from 8 a.m. to 5 p.m. The public may present written comments to the RAC. Depending on the number of individuals wishing to comment and time available, oral comments may be limited.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics include issues on renewable and nonrenewable resources.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7517.

Dated: July 18, 2008.

Linda S.C. Rundell,

State Director.

[FR Doc. E8–16941 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–08–1310–FI; COC66597]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC66597 from the following companies: (1) Cleary Petroleum Corp., (2) GSE LTD, (3) Peacock Comm. Properties, LTD, and (4) Joe R. Peacock, Sr., for lands in Montrose County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC66597 effective March 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: July 16, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8–16723 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–923–1430–ET; COC 0125423]

Public Land Order No. 7714; Modification of Public Land Order No. 3982; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies Public Land Order No. 3982, which withdrew public land for protection of recreation values and road relocation purposes, to allow for disposal of a 0.76 acre parcel. This order opens the land to sale only.

DATES: *Effective Date:* August 25, 2008.

FOR FURTHER INFORMATION CONTACT: John D. Beck, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3882.

SUPPLEMENTARY INFORMATION: As a result of a land survey error, a private party has built a dwelling on the 0.76 acre parcel and the Bureau of Land Management plans to sell the land to resolve the inadvertent trespass.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 3982 (31 FR 5898, April 16, 1966), which withdrew public land for protection of public recreation values and road relocation purposes, is hereby modified to allow for disposal of the following described land in accordance with Section 203 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1713 (2000).

New Mexico Principal Meridian

T. 44 N., R. 5 W.,
Tract 37.

The area described consists of a 0.76 acre parcel in Hinsdale County.

2. At 10 a.m. on August 25, 2008, the land described in Paragraph 1 shall be opened to sale in accordance with Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (2000).

Dated: July 9, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–16819 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–ES; N–84545; 8–08807; TAS:14X523]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes (R&PP) Act request for lease and subsequent conveyance of approximately 5 acres of public land in the City of Las Vegas, Clark County, Nevada. The City of Las Vegas proposes to use the land for a public park.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance of the lands until September 8, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Kimber Liebhauser, (702) 515–5088.

SUPPLEMENTARY INFORMATION: The following described land in Clark County, Nevada has been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The parcel of land is located on the southwest corner of Grand Teton Drive and Fort Apache Road, Las Vegas, Nevada, and is legally described as:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 18, E½NE¼NE¼NE¼.

The area described contains 5 acres, more or less.

In accordance with the R&PP Act, the City of Las Vegas has filed an R&PP application to develop the above described land as a public park with related facilities to meet the park space needs of this rapidly growing area. Related facilities include picnic shelters, walking paths, landscaping, restrooms, large open turf play areas, parking lot, off-site improvements including street grading and paving, street signage and signal construction. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–84545, which is located in the Bureau of Land Management (BLM), Las Vegas Field Office at the above address.

Cities are a common applicant under the public purposes provision of the R&PP Act. The City of Las Vegas is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act. The land is not required for any Federal purpose. The lease/conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/conveyance, 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).

2. All minerals shall be reserved to the United States, 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 lease/conveyance will be subject to:

1. Valid existing rights; and

2. A right-of-way for an underground distribution line granted to Nevada Power Company, its successors and assigns, by right-of-way N–77846, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. 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 Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

In the absence of any adverse comments, the decision will become effective on September 22, 2008. The lands will not be available for lease/conveyance until after the decision becomes effective.

(Authority: 43 CFR 2741.5)

Dated: July 8, 2008.

Beth Ransel,

Acting Assistant Field Manager, Division of Lands, Las Vegas, Nevada.

[FR Doc. E8–16997 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–08–1310–DR–NESP]

Notice of Availability of the Record of Decision for the Northeast National Petroleum Reserve—Alaska (NPR–A) Supplemental Integrated Activity Plan (IAP)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: The BLM announces the availability of the ROD for the Northeast NPR–A planning area, located within the NPR–A in northern Alaska.

ADDRESSES: Copies of the Northeast NPR–A Supplemental IAP ROD are available upon request from Jim Ducker, Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, Anchorage, AK 99513, or via the Internet at *http://www.blm.gov/ak*.

FOR FURTHER INFORMATION CONTACT: Jim Ducker, Environmental Program Analyst, Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, Suite #13, Anchorage, AK 99513, (907) 271–3130.

SUPPLEMENTARY INFORMATION: The Northeast NPR–A Supplemental IAP ROD completes a planning effort initiated in 2003 to amend the Northeast NPR–A IAP of 1998. The BLM completed the Northeast NPR–A Amended IAP/EIS in 2005 and issued a ROD based on the IAP/EIS in January 2006. In September 2006, the U.S. District Court for the District of Alaska found the Amended IAP/EIS's analysis inadequate and vacated the ROD for the Amended IAP/EIS. The BLM initiated the Supplemental IAP/EIS to address the inadequacies of the Amended IAP/EIS. The BLM issued a Draft Supplemental IAP/EIS for the planning area in August 2007 and a Final Supplemental IAP/EIS in May 2008.

The plan adopted in the Supplemental IAP ROD is essentially the same as Alternative D, the Preferred Alternative, in the Final Supplemental IAP/EIS. The ROD makes approximately 4 million acres available for oil and gas leasing immediately and approximately 430,000 additional acres available for leasing after ten years. The ROD provides for protection of surface values in lands available for leasing through a range of protective measures, such as restrictions on where permanent oil and gas facilities may be located, seasonal restrictions on certain activities, and restrictions on how activities may be conducted to minimize impacts. Most changes between the Final Supplemental IAP/EIS and the ROD reflect adoption of potential mitigation measures to provide additional protection for air quality, fish, birds, and public health.

Thomas P. Lonnie,

State Director.

[FR Doc. E8–16978 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Avalanche Hazard Reduction by Burlington Northern Santa Fe Railway in Glacier National Park and Flathead National Forest, Montana Final Environmental Impact Statement, Glacier National Park, MT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Avalanche Hazard Reduction by Burlington Northern Santa Fe Railway in Glacier National Park and Flathead National Forest, Montana.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement for the Avalanche Hazard Reduction by Burlington Northern Santa Fe Railway in Glacier National Park and Flathead National Forest, Montana. Four alternatives were analyzed: (A) No Action, (B-Preferred) No Explosive Use Permitted except under emergency extenuating circumstances, (C) Explosive Use Permitted for up to 10 Years, provided that BNSF agrees to construct snowsheds, and (D) Permanent ongoing explosive use in the park for up to 3 snow events each year, under a special use permit. The preferred alternative would permit BNSF to install weather forecasting equipment in the park for more accurate forecasting. It would permit BNSF to install new avalanche detection technology along the southern boundary of the park to detect avalanche activity. The alternative also provides for the emergency use of explosives when all other avalanche hazard reduction methods including train delays have been employed.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://parkplanning.nps.gov,* in the office of the Superintendent, Glacier National Park Headquarters, West Glacier, Montana 59936, 406–888–7901.

FOR FURTHER INFORMATION CONTACT: Mary Riddle, Glacier National Park, West Glacier, MT 59936, 406–888–7898, *mary_riddle@nps.gov*.

Dated: July 1, 2008.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. E8–16894 Filed 7–23–08; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Richmond American Homes of Maryland, Inc.,* Civ. No. 2:08–CV–01654, was lodged with the United States District Court for the Eastern District of California on July 18, 2008. This proposed Consent Decree concerns a complaint filed by the United States against Richmond American Homes of Maryland, Inc., pursuant to Sections 301(a) and 404 of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), 1344, to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to pay a civil penalty and a fee in lieu of direct mitigation for its impacts to waters of the United States.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Sylvia Quast, Assistant United States Attorney, 501 I Street, Suite 10–100, Sacramento, California 95814 and refer to *United States* v. *Richmond American Homes of Maryland, Inc.,* DJ # 90–5–1–1–18307.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of California, 4–200 Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. E8–16976 Filed 7–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 11, 2006 and published in the **Federal Register** on January 23, 2006, (71 FR 3545), Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II.
Poppy Straw (9650)	II.
Concentrate of Poppy Straw (9670).	II.

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from raw opium, poppy straw, and concentrate of poppy straw.

Comments, objections, and requests for a hearing were received. However, after a thorough review of this matter DEA has concluded that, per 21 CFR 1301.34(a), the objectors are not entitled to a hearing. As explained in the Correction to Notice of Application dated January 25, 2007, pertaining to Cody Laboratories *et al.* (72 FR 3417), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cody Laboratories, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA investigated Cody Laboratories, Inc. to ensure that the company's registration would be consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. After investigating these and other matters, I have concluded that registering Cody Laboratories, Inc. to import raw opium, poppy straw, and concentrate of poppy straw is consistent with the factors set forth in 21 U.S.C. 823(a)(2)–(6), as incorporated in 21 U.S.C. 958(a).

The DEA also considered whether the registration of Cody Laboratories, Inc. would be consistent with 21 U.S.C. 823(a)(1) that requires the DEA to limit the importation of certain controlled substances (including raw opium, poppy straw, and concentrate of poppy straw) ''to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions* * *.'' I find that the establishments currently registered with DEA to import raw opium, poppy straw, and concentrate of poppy straw provide an adequate and uninterrupted supply of those substances. The DEA found no evidence that the supply of such substances was inadequate or interrupted in supplying the needs of the United States for legitimate medical, scientific, research, and industrial purposes.

However, I find that the adequate and uninterrupted supply of these substances did not occur under adequately competitive conditions. Specifically, I find that Cody Laboratories, Inc. has demonstrated that the current importers of raw opium, poppy straw, and concentrate of poppy straw have, in some cases, refused to sell these substances to Cody Laboratories, Inc. Some of the current importers also use their position to demand restrictive contractual terms when selling narcotic raw material to Cody Laboratories, Inc. Many of the current importers also manufacture active pharmaceutical ingredients or have corporate ties to firms that manufacture active pharmaceutical ingredients from raw opium, poppy straw, and concentrate of poppy straw. These importers have a direct financial interest in refusing to sell narcotic raw material to Cody Laboratories, Inc. or in demanding significant contractual restrictions when selling narcotic raw material to Cody Laboratories, Inc.

Based on the information in the investigative file that is summarized herein, I find that the current importation of raw opium, poppy straw, and concentrate of poppy straw is not being conducted under adequately competitive conditions. Therefore, under 21 U.S.C. 823(a)(1), DEA may grant the application of Cody Laboratories, Inc. to import raw opium, poppy straw, and concentrate of poppy straw. Having already found that registering Cody Laboratories, Inc. to import raw opium, poppy straw, and concentrate of poppy straw is consistent with the factors set forth in 21 U.S.C. 823(a)(2)–(6), I find that the statutory factor set forth in 21 U.S.C. 823(a)(1) also weighs in favor of granting the application.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 18, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–16906 Filed 7–23–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 13, 2008 and published in the **Federal Register** on February 21, 2008, (73 FR 9592), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Lisdexamfetamine (1205), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection

and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: July 15, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–16905 Filed 7–23–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–29]

Laurence T. McKinney; Revocation of Registration

On February 5, 2008, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Laurence T. McKinney, M.D. (Respondent), of Philadelphia, Pennsylvania. The Order immediately suspended and proposed the revocation of Respondent's DEA Certificate of Registration, BM7201267, as a practitioner, on the grounds that his continued registration was ''inconsistent with the public interest'' and ''constitute[d] an imminent danger to public health and safety.'' Show Cause Order at 1 (citing 21 U.S.C. 824(a)(4) & 824(d)).

More specifically, the Show Cause Order alleged that Respondent was ''one of the largest prescribers of schedule II controlled substances in the Philadelphia area[,]'' and that ''[f]rom October 5, 2004 to November 30, 2007 [had written] 3,101 prescriptions for schedule II narcotics.'' *Id.* Next, the Show Cause Order alleged that Respondent sold prescriptions for narcotics for $100 per prescription, that he had issued prescriptions to undercover law enforcement officers on five separate dates between December 14, 2007, and January 30, 2008, that he had either failed to perform a physical examination or had conducted only a ''cursory physical examination'' on the Officers, and that he had also written a prescription for one of the undercover Officer's fictitious wife. *Id.* at 1–2. The Show Cause Order further alleged that these ''prescriptions were not issued for a legitimate medical purpose or in the normal course of professional practice'' and thus violated both Federal and state laws and regulations. *Id.* at 2 (citing 21 U.S.C. 841(a); 21 CFR 1306.04(a)).

Based on the above, I also made the preliminary finding that Respondent had ''deliberately diverted controlled substances'' and that his ''continued registration during the pendency of these proceedings would constitute an imminent danger to the public health or safety because of the substantial likelihood that [he would] continue to divert controlled substances.'' *Id.* at 2. I therefore also ordered the immediate suspension of Respondent's registration. *Id.*

On February 15, 2008, Respondent, through his counsel, requested a hearing on the allegations. ALJ Ex. 2. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner. Following pre-hearing procedures, a hearing was held on April 7, 2008 in Arlington, Virginia, at which both parties introduced testimonial and documentary evidence.[1] Upon conclusion of the hearing, both parties submitted briefs containing their proposed findings, conclusions of law and argument.

On May 5, 2008, the ALJ issued her recommended decision (ALJ). In her decision, the ALJ specifically rejected Respondent's testimony regarding his prescribing to the undercover patients finding that he was not credible. ALJ at 29. With respect to factor two (Respondent's experience in dispensing controlled substances), the ALJ concluded that ''the record establishes * * * that Respondent issued prescriptions to the undercover Officers for controlled substances without any meaningful physical examination or gathering sufficient information from the patients to arrive at a reasoned diagnosis or * * * to determine whether they had any condition at all warranting treatment with the drugs he prescribed to them.'' *Id.* at 29–30. The ALJ thus found ''that all the prescriptions Respondent issued to the undercover officers were not issued for a legitimate medical purpose.'' *Id.* at 30.

The ALJ further noted that various patient files introduced into evidence by the Government demonstrated that Respondent had not provided ''individualized attention'' to other patients. *Id.* Relatedly, while noting that Respondent had ''introduced into evidence patient files containing considerably more detailed information than those the Government offered,'' the ALJ reasoned that even if these files showed that Respondent had ''legitimately treated'' some patients, the files predated November 26, 2007, the date on which the Philadelphia Police Department had received a complaint about Respondent and did not ''diminish the weight of the evidence that he improperly prescribed controlled substances after it.'' *Id.*

With respect to factor four (Respondent's compliance with applicable laws), the ALJ concluded that Respondent had failed to comply with Pennsylvania law because he had issued prescriptions for controlled substances without doing proper physical examinations, taking adequate medical histories, documenting the patient's symptoms, his diagnosis and treatment recommendations, and that he had failed to counsel his patients regarding how the drugs should be taken, the appropriate dosage, and their side effects. *Id.* at 31. The ALJ thus concluded that ''Respondent violated applicable Pennsylvania law and also violated 21 CFR 1306.04, and thereby 21 U.S.C. 829(b).'' *Id.*

With respect to factor five (other conduct), the ALJ rejected Respondent's contention that he had prescribed pursuant to a good-faith belief that the undercover patients were in pain. *Id.* More specifically, the ALJ expressed her disbelief ''that Respondent did not know that the undercover Officers were not in pain but were trying to obtain controlled substances for other than a legitimate medical reason.'' *Id.* at 31. The ALJ further found that Respondent had ''refus[ed] to acknowledge his wrongdoing,'' and that there was ''little hope'' that ''he will act more responsibly in the future.'' *Id.*[2]

Based on her findings with respect to three of the factors, the ALJ concluded ''that Respondent is unwilling or unable to accept the responsibilities inherent in a DEA registration.'' *Id.* at 32. The ALJ thus recommended the revocation of Respondent's registration and the denial of any pending applications. *Id.*

Respondent filed exceptions to the ALJ's recommended decision. In this filing, Respondent raised thirty-three exceptions to the ALJ's decision.[3]

[1] The Government also introduced recordings of several undercover visits.

[2] The ALJ also found that Respondent had retained his state medical license and that this factor supported a finding ''that his continued registration would be in the public interest.'' ALJ at 29. The ALJ explained, however, that this factor was not dispositive because ''state licensure is a necessary but not sufficient condition for DEA registration.'' *Id.* The ALJ further found that while Respondent had been convicted of a felony, his offense did not involve an offense related to controlled substances. *Id.* at 30–31. The ALJ thus found that this factor supported his continued registration although it too was not dispositive.

[3] Respondent's Exceptions did not, however, comply with DEA's regulation which requires

Thereafter, the record was forwarded to me for final agency action.

Having considered the record as a whole, as well as Respondent's exceptions, I hereby issue this Decision and Final Order. While I do not adopt the ALJ's factual findings in their entirety, I adopt the ALJ's ultimate conclusions of law with respect to each of the statutory factors and her recommended sanction. I make the following findings of fact.

Findings

Respondent is a medical doctor who treats injury and trauma patients, as well as weight loss patients, at a clinic he operates in Philadelphia, Pennsylvania. Tr. 19–21. While Respondent previously held board certification in obstetrics and gynecology, he is no longer ''board certified in anything.'' *Id.* at 21.

In February 1998, Respondent pled guilty in Federal Court to two counts of mail fraud based on fraudulent billing practices. *Id.* at 48. Respondent was sentenced to a term of imprisonment of twelve months and one day which he served at the Federal Correctional Institution at Loretto, Pennsylvania, and in a halfway house.[4] *Id.* at 48–49; 266–67.

Respondent currently holds DEA Certificate of Registration, BM7201267, which before I suspended it, authorized him to handle controlled substances in schedules II through V as a practitioner at his registered location of 7514 Frankford Avenue, Philadelphia, Pa. GX 1, at 1. Respondent's registration does not expire until January 31, 2010. *Id.*

On November 26, 2007, the Philadelphia Police Department received a citizen's complaint which alleged that Respondent was prescribing controlled substances such as Xanax (alprazolam), and Percocet, a drug which contains oxycodone and acetaminophen.[5] GX 48. More specifically, the caller alleged that ''all the neighborhood kids know about'' Respondent, that all one had to do to get an appointment was to call his office and possibly tell him that ''you were referred by a neighbor,'' that ''the Doctor will tell you to come in and tell you to bring $100,'' and that ''[t]ell the doctor you have some type of aliment [sic] and he will write you a prescription for Xanax, Percocet, Oxycodone etc.'' *Id.*

Upon receipt of this tip, the Philadelphia Police Department's Intensive Drug Investigation Squad (IDIS) contacted DEA's Philadelphia Diversion Group, which had also received complaints about Respondent from local pharmacists. Tr. 154. As part of their investigation, the decision was made to have several IDIS members attempt to obtain prescriptions from Respondent. *Id.* at 83–84.

The First Undercover Visit

On December 6, 2007, an undercover Officer using the name of Nicole Hodge went to Respondent's office. *Id.* at 130. The Officer paid Respondent $100 in cash and told him that she had not been in an accident and did not have an injury but wanted a prescription for Percocet. *Id.* Respondent attempted to get the Officer to talk about an injury but she refused to. *Id.* Respondent refused to issue the prescription and told her to leave his office. *Id.* at 131. Respondent subsequently noted in Nicole Hodge's patient file that ''Pt. lied, Ask for Percocet. Patient is not injured.'' GX 23.

The Second Undercover Visit

On December 14, 2007, another IDIS Officer, who used the named Anthony Wilson, visited Respondent. After paying $100 in cash, Respondent asked the Officer whether he had been in an accident.[6] Tr. 86. The Officer stated that he had been. *Id.* Respondent then asked the Officer some unspecified question about pain; the latter answered that he ''hurt all over.'' *Id.* at 86–87. Moreover, the evidence includes a medical history form on which the Officer indicated as his complaint: ''Hurt All Over,'' that the location of his condition was ''all over,'' and that its severity was ''bad pain.'' GX 22, at 7.

According to the DEA Special Agent who debriefed the Officer, the latter did not exhibit any signs of injury and Respondent did not ask him to rate his pain level on a scale of one to ten. Tr. 87. The Officer reported that Respondent's physical examination was limited to touching him lightly on the shoulder and back; moreover, Respondent did not listen to his heart and lungs, and no one took his blood pressure. *Id.* at 88.

Respondent did not order any diagnostic tests such as an x-ray or mri. *Id.* at 198. Respondent nonetheless diagnosed the Officer as having back and neck contusions and prescribed to him 90 Percocet (10 mg.), 60 Xanax (1 mg.), and 60 Cataflam, a non-controlled substance. *Id.* at 89; GX 16. The prescription indicated that the Percocet should be taken every eight hours as needed for pain and that the Xanax should be taken every twelve hours as need for muscle spasms or anxiety. GX 16, at 2. Respondent did not, however, counsel the Officer regarding the dosing and frequency of taking the drugs, the drug's potential side effects and its interactions with other drugs. Tr. at 92.

Another form in the patient file indicates that the Officer's blood pressure was 120/82, as well as a height and weight. GX 22, at 5. Under the heading of ''history of pertinent facts,'' the form appears to state: ''Passenger in MVA driver side'' and ''8/10 pain scale.'' *Id.* Finally, another form entitled ''ROM—AMA Guides'' has a notation of ''+2'' in the blocks for ''Cervical Spine,'' ''Dorsal Spine'' and Lumbar/Sacral.'' *Id.* at 6.

While Respondent testified that either he or a nurse had taken the Officer's blood pressure, Tr. 312–13, the ALJ specifically credited the testimony of the DEA agent[7] regarding the various undercover visits and rejected Respondent's testimony pertaining to them. More specifically, the ALJ found that ''Respondent did not impress [her] as credible and appeared to try to tailor his testimony to suit his own purposes, particularly with respect to his insistence that he complied with Pennsylvania's requirements for prescribing controlled substances.'' ALJ at 29. I adopt the ALJ's credibility findings noting that she was in the best position to observe the demeanor of the respective witnesses. I therefore find that neither Respondent nor a nurse took the Officer's blood pressure during the visit. I further find that the history form for this visit contains no notation in the blocks for the patient's ''heart'' and ''lungs'' (nor in any of the other blocks save one in which findings pertaining to various bodily functions are recorded). I therefore further find that Respondent did not listen to Respondent's heart or lungs on this date.

The Third Undercover Visit

On January 3, 2008, the Officer returned to Respondent's office and again presented himself as Anthony Wilson and paid $100 for the visit. Tr.

citation to evidence of record which supports the exception. 21 CFR 1316.66(a).

[4] In March 2000, the State of Pennsylvania suspended Respondent's medical license for a period of four years based on his mail fraud convictions. Tr. 267. The State, however, stayed the suspension after nine months. *Id.* Shortly thereafter, Respondent was granted a new DEA registration. GX 1, at 2.

[5] Oxycodone is a schedule II controlled substance and derivative of opium. 21 CFR 1308.12(b)(1). Xanax is the brand name of alprazolam, a schedule IV controlled substance. *See id.* § 1308.14(c).

[6] According to the record, Respondent would instruct his ''patients'' when they called for an appointment that they should have cash. Tr. 92.

[7] As the ALJ explained, the Agent, in contrast to Respondent, ''appeared to be straightforward and candid.'' ALJ at 29.

97, 103. The same DEA Special Agent conducted surveillance of the visit. ALJ at 12.

Apparently while the Officer was in the waiting room, Respondent started calling out the names of patients. When Respondent called the Officer's undercover name, he asked him whether he was there for physical therapy. GX 3, at 2. At some point, the Officer was taken back to an exam room and was told by Respondent to take off his jacket. *Id.* The Officer stated to Respondent: ''last time you said I had neck and back contusions.'' *Id.* Respondent told the Officer to have a seat and asked him his first name. *Id.* The Officer answered: ''Anthony.'' *Id.*

Following an unintelligible statement of Respondent, the Officer offered to come back for physical therapy. *Id.* After Respondent was interrupted by several phone calls, the Officer offered to come back on Sunday for therapy and Respondent agreed. *Id.* The Officer then stated that the ''the first time I was here you didn't have therapy,'' and asked whether he had ''to fill out the paperwork again, or did she find my file?'' *Id.* Respondent answered: ''No that's all right, I saw it the other day, that's alright.'' *Id.* The Officer then asked whether if ''when I have the therapy and the medicine it's the same price or is it?'' *Id.* Respondent answered that it was the ''[s]ame price if you come in for just the prescription its 100 dollars, if you come in for the prescription and exam and therapy its 100 dollars, if you come in for just therapy its 100 dollars, o.k.'' *Id.*

During the visit, Respondent gave the Officer prescriptions for 90 Percocet (10/325 mg.) and 60 Xanax (1 mg.). *Id.* at 3; GX 17. While Respondent asked the Officer how he had been doing, Respondent limited his physical exam to pressing on the Officer's back and shoulder and did not listen to the Officer's heart and lungs or take his blood pressure. Tr. 99–100. Moreover, while it was less than three weeks since the Officer's previous visit (at which Respondent had also given him prescriptions for 90 Percocet and 60 Xanax, each of which should have lasted thirty days), Respondent did not question him about why he needed new prescriptions so soon. *Id.* at 102. Furthermore, once again, Respondent did not counsel the Officer about the two drugs. *Id.* Finally, the patient file for ''Anthony Wilson'' contains no documentation of this visit. *See* GX 22.

The Fourth and Fifth Undercover Visits

On January 18, at approximately 4:10 p.m., the Officer returned to Respondent's office and was accompanied by another Officer who used the name of Richard Johnson. Tr. 104. Respondent called for Johnson first, and asked him if it was his first visit. GX 5, at 1. Although the Officer had not previously been to Respondent's office, the Officer responded: ''No, I was here December 14th.'' [8] *Id.* Respondent then collected $100 from the Officer. *Id.*

About twenty minutes later, Respondent again asked the Officer his name. Upon being told ''Richard Johnson,'' Respondent asked the Officer: ''You said you been here before * * * you do construction right?'' *Id.* The Officer answered: ''Yes, sir.'' *Id.* After discussing the Officer's age and taking a phone call, Respondent asked the Officer: ''How you been doing since you [were] put on pain medication?'' *Id.* at 2. The Officer answered: ''pretty good.'' *Id.* When Respondent asked: ''Did it work real well?''; the Officer answered: ''Yes.''

Respondent next asked: ''you['ve] been taking the yellow ones three times a day?'' *Id.*[9] The Officer answered: ''Yes.'' *Id.* Respondent then stated: ''I had you on the blue ones at night''; the Officer commented: ''Yeah, at night.'' *Id.* Respondent then asked the Officer to ''stand up,'' and stated: ''7:05 p.m. Ok, what I'm going to do is refill your medication * * * we can finally get you out of here.'' *Id.* After taking a phone call, and commenting about people stealing pens from his office, Respondent noted that it was ''7:08 p.m.'' and stated: ''60 of the Xanax, 90 of the Percocet.'' *Id.* As evidenced by the actual prescriptions, Respondent prescribed 90 Percocet (10/325), which was to be taken every eight hours, and 60 Xanax 1 mg., which was to be taken every 12 hours. GX 18, at 2.

Respondent's physical exam was limited to tapping the Officer lightly on the back and shoulder. Tr. 112 Moreover, Respondent did not order any diagnostic tests. *Id.* at 113. During a subsequent search of Respondent's office, no patient file was found for Richard Johnson. *Id.* at 215.

Approximately 45 minutes later, Respondent saw the other Officer (Anthony Wilson) who was waiting in an exam room. GX 5, at 4. Respondent asked him ''how are you doing?,'' to which the Officer responded: ''I'll pay you now.'' [10] *Id.* About a minute later, Respondent entered the exam room and stated: ''I am going crazy right now, turn around this way.'' *Id.* In response, the Officer stated: ''I know it's been a long day.'' *Id.*

Respondent replied: ''You have no idea.'' *Id.* Respondent then stated: ''stand up facing me, try to bend down knees and touch your toes, come back up, alright, have a seat, look[s] like your doing a little better.'' *Id.* The Officer replied: ''Yes sir, yes sir.'' *Id.*

Respondent then stated: ''Last time I gave you Percocet 10's and Xanax right?'' *Id.* The Officer responded: ''Yes sir.'' *Id.* Respondent then stated: ''So that seems it gotta be working.'' *Id.* The Officer agreed, and added that ''the last time I didn't have any problems cashing the [unintelligible].'' *Id.* Respondent then stated ''script.'' *Id.* The Officer again commented to the effect that he had not had any problems filling his prescriptions. *Id.* at 5.[11] Respondent did not ask Wilson why he had returned only fifteen days after the previous visit. *See generally* GX 5, at 4–5.

During the visit, Respondent issued the Officer additional prescriptions for 90 Percocet (10/325 mg.) and 60 Xanax (1 mg.). GX 18, at 1. The prescriptions called for the Percocet to be taken every eight hours and for the Xanax to be taken every twelve hours. *Id.*

The Sixth and Seventh Undercover Visits

On the night of January 22, 2008, at 8:07 p.m., the Officer who had previously presented herself as Nicole Hodge went back to Respondent's office. Tr. 131. The Officer was accompanied by another Officer, who used the name ''John Rio,'' and apparently posed as her boyfriend. *See* GX 6, at 1.[12]

Shortly after her arrival, Respondent called her name and asked: ''Why are you here dear?'' GX 6, at 1. The Officer stated that she had been in an accident two days earlier. *Id.* Respondent asked: ''Nicole the last time you were here you

[8] The DEA Agent testified that Respondent attempted to find the Officer's patient file. Tr. 110–11.

[9] I take official notice of the Product Identification Guide found in the *Physician's Desk Reference* (2005). According to the Guide, Percocet 10/325 mg. tablets are yellow, *id.* at 311, and Xanax 1 mg. tablets are blue. *Id.* at 330. Based on this and the prescriptions Respondent wrote, I conclude that Respondent's references to the yellows ones and the blue ones were references to Percocet and Xanax respectively. In accordance with the Administrative Procedure Act and DEA regulations, Respondent is entitled to an opportunity to refute the facts which I have taken official notice by filing a motion for reconsideration within fifteen days of service of this Order, which shall begin on the date of mailing. *See* 5 U.S.C. 556(e); 21 CFR 1316.59(e).

[10] It is unclear whether Respondent had actually entered the exam room at this point or just stuck his head in it.

[11] Most of the remaining conversation between Respondent and the Officer centered on the Officer's problems with his ex-wife, although at one point the Officer stated: ''You said lower back and neck,'' and Respondent agreed. GX 5, at 5.

[12] According to GX 6, the Officers entered Respondent's office together. GX 6, at 1. It is unclear, however, whether they arrived in the same vehicle.

didn't have an injury remember?'' *Id.* The Officer answered: ''I know.'' *Id.* Respondent then asked the Officer whether she swore that she was injured this time. *Id.* The Officer answered that she had been ''out with my boyfriend and got hit by a car the other day.'' *Id.* The Officer then explained that ''I ran out before him * * * he pisses me off a lot.'' *Id.* Respondent laughed and asked: ''Well I'm sure you don't have anything to do with that at all, right?'' *Id.* The Officer then asked the Officer posing as her boyfriend: ''Did you push me in front of that car?''; the latter answered: ''No.'' *Id.*

Respondent then told ''John Rio'' to have a seat in an exam room and asked him: ''You been here before right?'' *Id.* The Officer answered ''Yeah,'' *Id.* although he had not been. Tr. 123. The female Officer then stated: ''I can hear you.'' GX 6, at 1. Respondent replied: ''I'm sure you can hear us, that's the point, we want you to hear us''; the female Officer responded: ''Oh.'' *Id.*

Respondent then asked the male Officer if he was having back pain. *Id.* The Officer answered affirmatively. *Id.* at 2. After some extraneous comments about his ex-wife, either Respondent or an assistant hooked the male Officer up to a physical therapy machine, recommended twenty minutes of treatment and started the machine. Tr. 126. The Officer then complained that the treatment ''hurts too much, man.'' GX 6, at 2. Respondent then told an assistant to ''cut it back to the minimum level''; the assistant acknowledged Respondent's order. *Id.* Several minutes later, the Officer disconnected himself from the machine and told Respondent's staff that he was doing so. Tr. 126–27. The record does not, however, establish whether Respondent was advised that the Officer had disconnected the machine.[13] *Id.* at 127.

At some point during the visit, Respondent issued to the Officer prescriptions for 90 Percocet (5/325 mg.); 30 Xanax (1 mg); and for Flexeril, a non-controlled muscle relaxant. GX 19, at 1–2. During the visit, while Respondent put two fingers on the Officer's back, he did not check the Officer's heart or lungs. Tr. 125. Nor did he counsel the Officer regarding the controlled substances he prescribed. *Id.* at 128–29. Moreover, during the subsequent search of Respondent's office, the authorities did not find a patient file for the Officer. *Id.* at 125. In his testimony, Respondent asserted that he maintained a file on the Officer and that this visit was probably the Officer's third visit with him. *Id.* at 313. I find, however, that it was the first visit.

Respondent then turned his attention to the female Officer and asked her if she had been driving. GX 6, at 2. The Officer answered: ''No, we were walking.'' *Id.* Respondent then asked her if she had gone to the hospital; Respondent answered: ''No.''

Respondent then asked her: ''What areas are hurting?'' *Id.* The video indicates that the Officer answered that her knee, left hip, and lower back were. GX 14. Next, Respondent asked her to numerically rank her pain level with one ''being no pain and ten being the worst possible pain.'' GX 6, at 2. The Officer stated that her pain level was ''a six.'' *Id.* Respondent then told her to ''let me take your pulse.'' *Id.*[14]

Following this, Respondent told the Officer: ''turn towards me, no turn, turn back and back up, back up, back up, that's good * * * within your comfort zone, if I ask you to do anything that causes severe pain don't do it.'' *Id.* The Officer acknowledged this by stating: ''OK.'' *Id.* at 3.

Respondent then directed the Officer to ''Put your head back, down to your chest, back to normal position, ok head to the side, the other side, back to normal position, rotate, to the right, back to normal position, bring your shoulders up.'' *Id.* The Officer then stated: ''like that hurts, down the center of my back.'' *Id.* Continuing, Respondent stated to the Officer: ''Side, other side, back to the normal position, backward and now touch your toes, turn around, relax your arms,'' and asked if there was ''no pain where [he was] pressing.'' *Id.* In response, the Officer answered: ''naw.'' *Id.*

Next, Respondent told the Officer to ''bring [your] right leg up as high as you can.'' *Id.* The Officer laughed. Respondent then told the Officer to ''bring [your] left leg up as high as you can.'' *Id.* He then told the Officer to ''have a seat up here''; the Officer responded: ''OK.'' *Id.*

Continuing, Respondent instructed the Officer to ''hold your hands together for me, relax, unpress them,'' and remarked ''that's tender.'' *Id.* Next, he told the Officer to ''lay on your back, cross your legs, raise your legs up,'' and then asked ''where's the pain?'' *Id.* The Officer answered: ''my lower back.'' Respondent then told the Officer to ''sit up,'' and asked her several questions regarding whether she had filed a report with her insurance company, and whether she was planning any legal action. *Id.*

Respondent then left the room to get another form. *Id.* When he returned, Respondent explained to the Officer that she had mild sprains of her neck, middle lower back, left hip and both knees. *Id.* He further noted that her injuries would take four to six weeks to heal and asked if she was paying cash for her prescription. *Id.* After the Officer stated ''Yep,'' Respondent told her that he was going to prescribe a drug that was a mild anti-inflammatory and pain medication, as well as a mild muscle relaxant to help her sleep. *Id.* With respect to the first drug, Respondent told the officer to ''only take one twice a day.'' *Id.* Respondent also told the Officer to take the muscle relaxant ''every 12 hours if you have [a] muscle spasm,'' and to ice her knees three times a day for fifteen minutes. *Id.* at 4. Respondent further told the Officer to come back ''in a few weeks'' and that she could come back without making an appointment. *Id.* Respondent prescribed sixty tablets of Vicoprofen, a schedule III controlled substance which contains hydrocodone and ibuprofen, and Soma (carisoprodol), a non-controlled substance. GX 19, at 3.

The Eighth and Ninth Undercover Visits

On January 30, 2008, at 6:45 p.m., the Officers who had previously posed as Anthony Wilson and Richard Johnson returned to Respondent's office. GX 7, at 1. At 7:49 p.m., Respondent asked: ''Who's for prescription refills?'' GX 7, at 1. The Officer posing as Anthony Wilson answered: ''Right here.'' *Id.*

Seven minutes later, the Officer told Respondent that the ''last time I have my wife with me, but she couldn't make it today, can I pick up her script for her?'' *Id.* Respondent replied: ''your wife, yeah, you can do that one time.'' *Id.* The Officer then stated: ''thank you, that's for her and that's for me.'' *Id.* Respondent then said: ''OK, you gotta tell me who the wife is.'' *Id.* The Officer stated that his wife's name was ''Shania Wilson.''[15] *Id.* Respondent subsequently gave the Officer prescriptions issued in the name of T. Wilson for 60 Xanax (1 mg.), and 90 Percocet (5/325 mg.). *See* GX 20, at 1–2; GX 7, at 2.[16]

Shortly thereafter, Respondent asked the Officer: ''Which Percocet are you getting—either yellow or the greens

[13] The ALJ further found that during the visit, Respondent did not take a medical history or order any diagnostic tests. Tr. 126.

[14] In his testimony, Respondent maintained that he listened to the Officer's heart and lungs and that a nurse took her blood pressure. Tr. 310, 312, 334.

[15] As was the Officer's undercover identity, Shania Wilson was also a fictitious name.

[16] While Shania Wilson was not a real person, the DEA Agent testified that he believed that Respondent had a patient with the name that Respondent used on the prescriptions. Tr. 144, 229. To protect her privacy, her first name will not be used.

ones?'' GX 7, at 2. The Officer answered: ''the yellow.'' *Id.* Respondent then gave the Officer prescriptions issued in the name of Anthony Wilson for 60 Xanax (1 mg.) and 90 Percocet (10/325 mg.). *Id.*

Respondent also issued to the Officer posing as Richard Johnson prescriptions for 90 Percocet (10/325 mg.) and 60 Xanax (1 mg.). GX 20, at 3. During these visits, Respondent did not perform any type of examination on either of the Officers and did not even discuss with them their conditions. Tr. 144–45.

Regarding his issuance of the prescription to the first Officer's fictitious wife, Respondent testified that he told the Officer that he normally did not do this but that the Officer had stated that his wife ''was in such severe pain that she couldn't get out of bed, and she really needed a refill.'' *Id.* at 317. Respondent further asserted that the Officer had given him the name ''T ------,'' so he ''pulled her chart,'' and ''verified that,'' and ''wrote the prescription.'' *Id.* at 318. Respondent further maintained that he based his decision on when Ms. Wilson ''had her last refill.'' *Id.* Respondent, however, produced no evidence from this patient's chart establishing that he had previously diagnosed her with a condition that warranted the prescribing of Percocet and Xanax. Moreover, the only evidence on this issue indicated that the real Ms. Wilson had last been prescribed Percocet more than four months earlier. *See* GX 45, at 95.

The ALJ specifically found incredible Respondent's testimony regard his filling of the prescription for the fictional Ms. Wilson. ALJ at 18. While Respondent may have pulled a chart for the real Ms. Wilson, *see* GX 7, at 2 (Officer stating ''that's my wife there''); neither the transcript nor the video contain any evidence that the Officer had represented that his wife was in such severe pain that she could not get out of bed. Accordingly, I adopt the ALJ's credibility finding to the extent she rejected Respondent's testimony that the Officer represented that his wife was in severe pain and could not get out of bed and his testimony that he based his decision on when Ms. Wilson had her last refill.[17]

Respondent also testified regarding his having issued prescriptions before previous prescriptions which were for a thirty-day supply should have run out. As found above, Respondent issued prescriptions for both 60 Xanax and 90 Percocet to the Officer who posed as Anthony Wilson on December 14, 2007, and on January 3, 18, and 30, 2008. Moreover, Respondent issued prescriptions for Xanax and Percocet to Richard Johnson on both January 18 and 30, 2008.

Regarding these prescriptions, Respondent testified that ''[i]n one case the person indicated that they were going to be away during that particular week, and [asked] could they get their prescriptions a week early.'' Tr. 318–19. Respondent further explained that with respect to the other patient, ''it was a matter of not being able to locate that individual's chart, and because I couldn't locate the chart, at that particular time, which was I think the 18th of January or so, I took him at his word and good faith.'' *Id.* at 319.

Continuing, Respondent testified: ''I asked him, I said, 'Are you sure that it has been 30 days since you had your last prescription?' And he said, 'Yes, it was.' So, then, I wrote out his prescription.'' *Id.* Respondent also maintained that ''what happened was that [the] copy that was made did not get back into his chart, so when he came back on the 30th, it looked as though * * * he was * * * last here on around the 30th of December, so he was issued another prescription.'' *Id.*

Respondent further attempted to justify his issuance of early prescriptions by contending that there were ''safeguards'' in place against the early filling of his prescriptions. *Id.* More specifically, Respondent testified that if the patient ''either takes it to the same pharmacy or tries to use his insurance, they will notify me that the prescription has been filled less than 30 days, and then I can reject it.'' *Id.*

It is unclear whether the ALJ credited Respondent's testimony regarding his issuance of the early prescriptions to Anthony Wilson and Richard Johnson. *See* ALJ at 17–18.[18] In any event, as ultimate factfinder, I reject Respondent's testimony. Respondent's testimony was vague in that he did not identify which of the two undercover Officers had stated that he was going to be away and needed the new prescription/early refill.[19] Moreover, there is no credible evidence to support Respondent's claim that either Officer (Anthony Wilson or Richard Johnson) had ever represented that they were going to be away when their prescriptions ran out. As for Respondent's assertion that he asked the other patient whether it had been thirty days since the last prescription, there is likewise no credible evidence of his having done so.

I also reject Respondent's testimony regarding the safeguards to protect against the early filling of prescriptions. As for his contention that an insurance company would notify him if a patient attempted an early refill, notably the undercover officers did not use insurance, but rather, paid cash for their visits. As for Respondent's contention that the pharmacy would notify him that a patient was attempting an early refill, this would be true only if the patient used the same pharmacy. Drug abusers typically know better than to take an early refill to the same pharmacy (unless the pharmacy is in cahoots with the prescriber).

Other Evidence

Both parties also submitted into evidence additional patient records. The Government introduced sixteen patient files; nearly all of the patients received prescriptions for Percocet and Xanax. *See* GXs 24–39. Moreover, some of the files lack documentation of a physical exam and/or a medical history. *See* GX 25 (J.L.); GX 26 (E.L.); GX 27 (J.L.); GX 31 (A.L.); GX 32 (B.L.); GX 33 (O.G.); GX 34 (B.G.); GX 35 (J.L.); GX 36 (M.K.); GX 38 (R.K.); GX 39 (M.G.).

Respondent submitted four patient files into evidence. Notably, and in contrast to the patient files cited above, three of these files contain extensive documentation of the findings of an initial physical exam, Respondent's assessment/diagnosis, and his treatment recommendations. *See* RX 13A, at 670–72; RX 13B, at 764; RX 13D, at 4740–42. Moreover, each of the files contains documentation of the physical exams performed, the assessments made, and treatment recommendations given on followup visits. *See* RX 13A, at 677–78, 681–82, 694; 702, 703; RX 13B, at 774, 781, 788, 814; RX 13C, at 4024, 4035; RX 13D, at 4727–28, 4731, 4746, 4753, 4754, 4757, 4759–61, 4762, 4775.

Respondent also introduced into evidence copies of four different notices he had posted in his office. Two of these warned his patients that it was a felony offense to obtain prescription drugs by fraud or ''for other than prescribed reasons,'' as well as to resell them. RXs 1 & 2. Another notice listed numerous excuses used by drug-abusing patients to obtain early refills and which Respondent deemed to be ''unacceptable.'' RX 3.

In the fourth of the notices, Respondent stated that it had recently come to his attention that several of his

[17] In his testimony, Respondent did not identify when he had last seen the patient or the medical condition which justified the prescribing of Percocet and Xanax.

[18] In contrast to the testimony regarding Respondent's issuance of a prescription to Ms. Wilson which she specifically rejected, the ALJ did not expressly address whether she found this testimony credible. ALJ at 17–18.

[19] Under Federal law, a prescription for a schedule II controlled substance cannot be refilled. 21 U.S.C. § 829(a).

patients were ''faking their illnesses, injuring themselves intentionally an [sic] lying to [him] for the purpose of obtained controlled III prescriptions (I.E. Perococet [sic]) and controlled II prescriptions (Xanax).'' RX 4. Respondent further asserted that ''I am sickened by you individuals,'' and that ''I am not a 'dirty doctor.' '' *Id.* Respondent then maintained that he was going to discharge ''[a]ll patient [sic] referred by the individual who have not been in auto accidents who are not treating three times per week.'' *Id.* Respondent further stated that he would ''no longer prescribe Controlled III [and] Controlled II medications to anyone,'' and while he would continue to treat all of his legitimate patients, he would so ''without Controlled II or III medications.'' *Id.*[20]

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Having considered all of the statutory factors, I conclude that on balance, the evidence pertaining to Respondent's experience in dispensing controlled substances (factor two) and his record of compliance with applicable laws related to the prescribing of controlled substances (factor four) establish that his continued registration would be ''inconsistent with the public interest.''[21] 21 U.S.C. 823(f). Moreover, while I do not find that all of the prescriptions he issued were illegal under Federal law, I agree with the ALJ's finding under factor five that Respondent has failed acknowledge his wrongdoing and therefore cannot be entrusted with a registration.

Factor Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

Under DEA regulations, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. § 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id. See also* 21 U.S.C. 802(10) (defining the term ''dispense'' as meaning ''to deliver a controlled substance to an ultimate user * * * pursuant to *the lawful order of * * * a practitioner*, including the prescribing and administering of a controlled substance'') (emphasis added).

As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 546 U.S. 243, 274 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).[22]

Consistent with the standards of Federal law, Pennsylvania law prohibits ''[t]he * * * prescription of any controlled substance by any practitioner * * * unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.'' 35 Pa. Stat. § 780–113(a)(14). Moreover, under the Pennsylvania Administrative Code, a practitioner must meet certain ''minimum standards''[23] before prescribing a controlled substance including taking an initial medical history and conducting ''an initial physical examination * * * unless emergency circumstances justify otherwise.''[24] 49 Pa. Code § 16.92(a)(1). Furthermore, ''[t]he physical examination shall include an evaluation of the heart, lungs, blood pressure and *body functions that relate to the patient's specific complaint.'' Id.* (emphasis added).

This regulation also requires that a physician provide ''[a]ppropriate counseling * * * to the patient regarding the condition diagnosed and the controlled substance prescribed.'' *Id.* § 16.92(a)(3). Furthermore, ''[u]nless the patient is in an inpatient care setting, the patient shall be specifically counseled about dosage levels, instructions for use, frequency and duration of use and possible side effects.'' *Id.*

Finally, the regulation requires that the physician record ''certain information * * * in the patient's medical record on each occasion when a controlled substance is prescribed,'' which ''shall include the name of the controlled substance, its strength, the

[20] Respondent also introduced into evidence copies of various prescriptions which he maintained had been written by patients who had stolen his prescription pads. *See* RXs 5–10.

[21] I acknowledge that there is no evidence that the Pennsylvania Board has taken action against Respondent's medical license (factor one). There is also no evidence that Respondent has been convicted of an offense related to controlled substances under Federal or State law (factor three).

[22] It is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to be acting ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' 21 CFR 1306.04(a); *see also United States* v. *Moore*, 423 U.S. 122, 142–43 (1975). The CSA, however, generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship. *See Kamir Garces-Mejias*, 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.*, 72 FR 50397, 50407–08 (2007); *Dispensing and Purchasing Controlled Substances Over the Internet*, 66 FR 21181, 21182–83 (2001).

[23] The regulation further states that it ''establishes minimum standards for the prescription, administration and dispensation of controlled substances by persons licensed to practice medicine and surgery in'' Pennsylvania. 49 Pa. Code § 16.92(b).

[24] Respondent does not contend that any of the undercover patients presented a medical emergency.

quantity and the date it was prescribed.'' *Id.* § 16.92(a)(4). The regulation further mandates that ''[o]n the initial occasion when a controlled substance is prescribed * * * to a patient, the medical record shall * * * include a specification of the symptoms observed and reported, the diagnosis of the condition for which the controlled substance is being given and the directions given to the patient for the use of the controlled substance.'' *Id.*

Applying these standards, I do not find that the Government has proved that each of the prescriptions issued to the undercover officers violated Federal law. The evidence nonetheless establishes that on several occasions, Respondent issued prescriptions to the undercover officers for Percocet and Xanax—both of which are highly abused drugs—that did not comply with Federal law. I further find—based on the lack of any supporting documentation of a physical exam in various files—that Respondent issued numerous other prescriptions for controlled substances in violation of Pennsylvania's regulation.

The Visits of Nicole Hodge

At the outset, I note that Respondent did not commit any illegal acts when he was first approached by ''Nicole Hodge.'' Rather, when the Officer asked for Percocet and made clear that she was not injured, Respondent told her to leave his office, and did not issue her any prescription.

Respondent's interaction with ''Nicole Hodge'' during the second visit is more problematic. The evidence shows that Respondent specifically questioned her about what areas were hurting and asked her to rank her pain level. The Officer unambiguously presented a medical complaint by stating that her ''lower back'' was hurting and that her pain level was ''six'' on a scale of one to ten. Respondent then put the Officer through several different range-of-motion tests. Moreover, Respondent took her pulse. Finally, Respondent diagnosed her injuries, explained his diagnosis and treatment recommendations, and provided the Officer with instructions on how to take the medicines he prescribed.

The ALJ did not credit Respondent's testimony that he listened to the Officer's heart and lungs and had a nurse take her blood pressure. Tr. 310 & 312. Moreover, there is no documentation in the patient file that he did so. *See* GX 23, at 7. That being said, as the Supreme Court explained in *Gonzalez*, ''the [CSA] and our case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood.'' 546 U.S. at 270.

Likewise, numerous court decisions make plain that the offense of unlawful distribution requires proof that the practitioner's conduct went ''beyond the bounds of any legitimate medical practice, including that which would constitute civil negligence.'' *United States* v. *McIver*, 470 F.3d 550, 559 (4th Cir. 2006); *see also United States* v. *Feingold*, 454 F.3d 1001, 1010 (9th Cir. 2006) (''[T]he *Moore* Court based its decision not merely on the fact that the doctor had committed malpractice, or even intentional malpractice, but rather on the fact that his actions completely betrayed any semblance of legitimate medical treatment.''). As the Fourth Circuit has further explained, ''the scope of unlawful conduct under § 841(a)(1) [requires proof that a physician] used his authority to prescribe controlled substances * * * not for treatment of a patient, but for the purpose of assisting another in the maintenance of a drug habit or some other illegitimate purposes, such as his own personal profit.'' 470 F.3d at 559 (int. quotations and citation omitted).

Accordingly, while Respondent's failure to listen to the Officer's heart and lungs and take her blood pressure violated Pennsylvania's regulation, the totality of the evidence surrounding this visit does not establish that he, in issuing the Vicoprofen prescription to Ms. Hodge, lacked a legitimate medical purpose and acted outside of the course of professional practice. The Officer presented a medical complaint, identified specific areas of her body as the cause of her pain, and complained of a relatively high pain level. Moreover, at no point did the Officer convey to Respondent that she was not in pain. Notwithstanding that Respondent failed to perform several steps required by Pennsylvania law, the physical exam he conducted cannot be characterized as deficient or cursory in the absence of expert testimony establishing as much.

At most, the evidence suggests that Respondent committed malpractice. It does not, however, support the conclusion that Respondent used his prescription writing authority to engage in illicit drug dealing when he issued the Vicoprofen prescription to Ms. Hodge.[25] *See McIver,* 470 F.3d at 559.

The Visits of Anthony Wilson

At his first visit, Anthony Wilson presented as his medical complaint that he ''Hurt All Over,'' that the location of his condition was ''all over,'' and its severity was ''bad pain.'' While Respondent did not ask the Officer to rate his pain level on a numerical scale, the Government offered no evidence to show that a practitioner must do so when the patient has already indicated that he has ''bad pain.''

The evidence further establishes that Respondent's physical exam was limited to touching him lightly on the shoulder and back, that Respondent did not listen to his heart and lungs, and that neither Respondent nor anyone else took his blood pressure. Based on this physical exam, and without ordering any diagnostic testing, Respondent diagnosed the Officer as having back and neck contusions and issued him prescriptions for 90 Percocet (10 mg.), 60 Xanax (1 mg.), as well as Cataflam, a non-controlled drug.[26] Respondent did not, however, counsel the patient regarding the taking of the drugs. At a minimum, Respondent's conduct violated Pennsylvania's Administrative Regulation pertaining to the prescribing of controlled substances.[27]

On January 3, 2008—less than three weeks later—the Officer returned. While Respondent asked the Officer how he was doing and pressed on his back and

[25] The Government does not cite to any decision in which the Pennsylvania Courts or Medical Board have held that a physician's failure to comply with this regulation in all respects establishes a violation of the Pennsylvania Controlled Substances Act.

[26] Based on the dosing instructions, both the Percocet and Xanax should have lasted thirty days.

[27] Respondent's conduct creates a strong suspicion that his prescribing exceeded the course of professional practice as this term is used in Federal law and was also not ''in accordance with treatment principles accepted by a responsible segment of the medical profession'' as required by Pennsylvania law. 35 P.S. § 780–113(a)(14). But while the Government cited several cases which upheld the convictions of physicians who engaged in similar conduct to Respondent, in all but one of the cases there was expert testimony establishing that the physician's conduct exceeded the bounds of professional practice. *See United States* v. *Bek,* 493 F.3d 790, 799–800 (7th Cir. 790); *McIver,* 470 F.3d at 556; *Feingold,* 454 F.3d at 1005; *United States* v. *Alerre,* 430 F.3d 681, 686 (4th Cir. 2005).

Moreover, in the only case cited by the Government in which there was no expert testimony, the undercover officer made clear that he was seeking Percocet to party and would share the drugs with others. *United States* v. *Celio,* 230 Fed. Appx. 818, 822 (10th Cir. 2007). By contrast, in this case, with the exception of the first visit of Nicole Hodge, the undercover officers frequently complained of pain and made no statements which indicated that they were seeking the drugs for non-medical purposes.

The Government also cites a state case to contend that ''expert testimony is not always necessary to determine whether a practitioner may be convicted under'' the Pennsylvania statute. Gov. Prop. Findings at 11 n.2 (citing *Commonwealth* v. *Manuel,* 844 A.2d 1 (Pa. Super. Ct. 2004). Notwithstanding the court's statement in *Manuel,* there, the State presented expert testimony as to the appropriateness of the physician's prescribing practices. *See* 844 A.2d at 11.

shoulder, he proceeded to issue him more prescriptions for 90 Percocet and 60 Xanax even though the prescription he had previously issued should not have been exhausted. Respondent did not ask the Officer why he needed his prescription refilled ten days early. Furthermore, the Respondent did not document the prescribing in the Officer's patient file as required by the Pennsylvania regulation.

On January 18, 2008—only fifteen days after the previous visit—the Officer saw Respondent again. Respondent asked the Officer how we was doing, and performed a physical exam which was limited to having the Officer attempt to bend his knees and try to touch his toes. While Respondent asked whether he had previously given the Officer Percocet 10s and Xanax, once again he did not question the Officer as to why he had returned when the second prescription should have lasted another fifteen days. Respondent nonetheless gave the Officer another prescription for 90 Percocet (10/325) and 60 Xanax (1 mg.).

On January 30, 2008—which was only twelve days since the previous visit—the Officer returned to Respondent's clinic for a fourth time. Approximately one hour after his arrival, Respondent appeared in the waiting area and asked: ''Who's for prescription refills?,'' to which the Officer said: ''right here.''

A few minutes later, the Officer told Respondent that the ''last time I have my wife with me, but she couldn't make it today, can I pick up her script for her?'' Respondent replied that the Officer could ''do that one time.'' The Officer subsequently told Respondent that his wife's name was ''Shania Wilson.'' Subsequently, Respondent issued prescriptions to Anthony Wilson for 90 Percocet (10/325 mg.) and 60 Xanax (1 mg.). He also issued prescriptions for a T. Wilson for 90 Percocet (5/325 mg.) and 60 Xanax (1 mg.), which he gave to the Officer.

Notably, Respondent did not even ask the Officer how he was doing and issued the prescriptions to him without even the pretense of conducting a physical exam. Indeed, the only question he asked the Officer was which color Percocet tablet he was getting, thus giving the ''patient'' the right to decide what strength of drug he wanted. Moreover, it was the third time in less than a month that the Officer had sought prescriptions for these drugs well before the previously issued prescriptions should have run out. Yet again, Respondent did not question the Officer as to why he had returned so soon.

Given these circumstances, expert testimony is not required to conclude that in issuing these prescriptions, Respondent exceeded the bounds of professional practice and that the prescriptions lacked a legitimate medical purpose because Respondent failed to take any steps to determine whether there was a continuing medical need for the prescriptions. See 21 CFR 1306.04. Beyond that, he issued the prescriptions notwithstanding that even a cursory review of the Officer's file would have indicated that he had issued prescriptions to the Officer only twelve days earlier. Likewise, the decision as to what strength of drug a patient should take is the physician's responsibility and is not the province of the patient. In short, Respondent's issuance of the prescriptions on this date does not remotely resemble the legitimate practice of medicine or even the negligent practice of legitimate medicine. Rather, it is out-and-out drug pushing.

Likewise, expert testimony is not required to conclude that Respondent lacked a legitimate medical purpose and exceeded the bounds of professional practice in issuing the prescriptions for the Officer's fictitious wife. Notably, the Officer had repeatedly sought and obtained new prescriptions well before previous prescriptions would have run out and had thus demonstrated a clear and obvious pattern of drug-seeking behavior. Moreover, Respondent issued the prescriptions to a patient who was not physically present and thus could neither be questioned as to whether she had a medical condition that required controlled substances nor physically examined. And he did so notwithstanding that the Officer made no representation that his ''wife'' had a medical need for the prescriptions.

Furthermore, Respondent did not even attempt to contact ''her'' to determine whether there was a medical justification for the prescriptions. Cf. 49 Pa. Code § 16.92(a)(5) (authorizing the issuance of a ''a prudent, short-term prescription'' based on ''an emergency phone call by a known patient''). Finally, both the Percocet and Xanax prescriptions were for a thirty-day supply and appear to be well beyond what Pennsylvania authorizes on an emergency basis.[28]

I thus conclude that Respondent exceeded the bound of professional practice in issuing the prescriptions to Ms. Wilson and that these prescriptions were not supported by a legitimate medical purpose. 21 CFR 1306.04. In short, Respondent's issuance of these prescriptions was not simply the negligent practice of medicine but rather drug pushing.

The Visits of Richard Johnson

On January 18, 2008, another undercover officer, who used the name Richard Johnson, visited Respondent. When asked by Respondent whether it was his first visit, the Officer represented that he had previously seen Respondent on December 14th although he had not. Later, and apparently while in the exam room, Respondent asked the Officer how he had been doing since he was put on pain medication; the Officer answered ''pretty good.'' Respondent asked a followup question as to whether the medication worked well; the Officer answered ''yes.''

The evidence establishes that Respondent performed a limited physical examination by lightly tapping the Officer on the back and shoulder. Moreover, Respondent acknowledged that he had been taking the yellow ones (a reference to Percocet) and the blue ones (a reference to Xanax). Respondent then stated that he was going to refill the Officer's prescriptions and issued him prescriptions for 90 Percocet and 60 Xanax. During the subsequent search of Respondent's office, no file was found for Richard Johnson.

While it is clear that the Officer misrepresented his status as a prior patient, there is no evidence establishing that Respondent knew this to be false. Moreover, the Government produced no evidence regarding the proper course of professional practice when a patient represents that he has recently been treated and the physician cannot find the patient's medical records. At most then, the evidence establishes that Respondent violated Pennsylvania's regulation because he failed to document the issuance of the prescriptions.[29] *See* 49 Pa. Code § 16.92(a)(4).

Twelve days later, Richard Johnson returned to Respondent's office. Respondent issued him prescriptions for 90 Percocet (10/325 mg.) and 60 Xanax (1mg.) without even asking him about

[28] Even if the Officer pointed to the patient file for a real Ms. Wilson, the fact remains that the Officer did not identify any medical reason for why his ''wife'' needed a prescription. Moreover, Respondent made no attempt to contact Ms. Wilson to determine whether she had a continuing medical need for the prescription and whether the requirements were met for issuing an emergency prescription under Pennsylvania's regulation.

[29] While the Pennsylvania regulation clearly requires that a practitioner perform a physical examination (or that one has been performed by another practitioner within the ''immediately preceding 30 days,'' 49 Pa. Code § 16.92(a)(1)), before commencing treatment with a controlled substance, the Government produced no evidence establishing that a physical examination is required at every follow-up visit at which a controlled substance is prescribed.

his condition. Moreover, Respondent did not ask the Officer as to why he needed new prescriptions after only twelve days. Given the circumstances of this visit, it is clear that there was no legitimate medical purpose for the prescriptions and that Respondent exceeded the bounds of professional practice in issuing them. *See* 21 CFR 1306.04(a). As was the case with the prescriptions issued to the Officer on January 18, Respondent did not document the prescriptions and violated the Pennsylvania regulation for this reason as well. 49 Pa. Code § 16.92(a)(4).

The Visit of John Rio

On the night that ''Nicole Hodge'' made her second visit, an Officer posing as ''John Rio'' accompanied her. Although the Officer had not previously been to Respondent's office, he told Respondent that he had been. Moreover, when asked by Respondent if he had back pain, the Officer answered affirmatively. Respondent then recommended that the Officer receive twenty minutes of physical therapy and either Respondent or an assistant proceeded to set up the machine and started the treatment. After the Officer complained that the treatment hurt too much, Respondent told an assistant to cut back the level of the treatment. While the Officer subsequently disconnected the machine and told Respondent's staff that he was doing so, there is no evidence that Respondent was advised of this. During the visit, Respondent gave the Officer prescriptions for 90 Percocet, 30 Xanax, and a muscle relaxant which is not controlled. Moreover, during the subsequent search of Respondent's office, the authorities did not find a patient file for him.

As was the case with the first visit of ''Richard Johnson,'' the evidence does not establish that Respondent violated Federal law in issuing the prescriptions. Here again, there is no evidence as to the proper course of professional practice when a patient represents that he has previously been treated by a physician. At most, the evidence establishes a violation of the Pennsylvania regulation requiring that each issuance of a controlled-substance prescription be documented in the patient's medical record. *See* 49 Pa. Code § 16.92(a)(4).

Other Violations

As found above, the record includes numerous patient files which show that Respondent prescribed controlled substances and yet lack any documentation that he (or another physician [30]) took a medical history, performed a physical examination and diagnosed a medical condition which warranted the various prescribings. Indeed, the documentation contained in these files is charitably described as threadbare and stands in stark contrast to the level of thoroughness and detail found in the four patient files which Respondent submitted as evidence of the appropriateness of his recordkeeping practices. *Compare, e.g.*, GXs 25–27, 31–36, 38–39, *with* RXs 13A–D; *see also* Tr. 302–306 (Respondent's testimony that RXs 13A–D were ''representative of how [he] maintained a patient file''). At a minimum, this evidence establishes numerous additional instances in which Respondent violated the Pennsylvania regulation.

In any event, while the Government's proof does not establish that each of Respondent's prescribings to the undercover officers violated the prescription requirement of Federal law and were thus unlawful distributions under 21 U.S.C. 841(a), it has shown that several of them did. *See* 21 CFR 1306.04(a).[31] Moreover, the record clearly establishes that Respondent repeatedly failed to properly document the necessity for prescribing controlled substances to numerous patients and to properly counsel his patients regarding the taking of the drugs. *See* 49 Pa. Code § 16.92(a). I thus conclude that Respondent's experience in dispensing controlled substances and his record of compliance with applicable laws and regulations amply demonstrates that his continued registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(f).

Factor Five—Such Other Factors

Under Agency precedent, where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' '' *Medicine Shoppe-Jonesborough,* 73 FR 363, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988)). Moreover, because ''past performance is the best predictor of future performance, *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

The record supports the conclusion that Respondent has not accepted responsibility for his misconduct. As found above, Respondent's testimony regarding both his issuance of the prescriptions for the Officer's fictitious wife and the early prescriptions was not credible. Moreover, Respondent's testimony that ''it was never my intent to give more medication'' than a thirty-day supply, Tr. 322–23, is belied by his failure to ever ask the two Officers (on their subsequent visits) why they had returned so soon and were in need of additional drugs.

Indeed, when Anthony Wilson returned for the fourth and final time, Respondent did not even ask him about his condition. Respondent nonetheless failed to offer any explanation as to why he issued him two more prescriptions (and did so only twelve days after having issued other prescriptions).

[30] *See* 49 Pa. Code § 16.92(a)(1).

[31] I have also considered the evidence regarding the first undercover visit during which the Officer told Respondent that she was not injured and brazenly asked for a prescription for Percocet. While I acknowledge that Respondent threw the Officer out of his office, the mitigating character of this evidence is outweighed by the incidents in which Respondent wrote prescriptions without inquiring as to why the Officers were prematurely seeking new prescriptions, the incident in which Respondent provided the Officers with the prescriptions without even inquiring as to whether there was a continuing medical need for them, and the issuance of the prescriptions to the Officer's fictitious wife. Indeed, it may well be that Respondent believed the first incident to be a set-up or that he would only issue prescriptions to those who claimed to be injured as alleged by the caller who reported him to the police.

I further conclude that the various signs Respondent posted in his office are entitled to no weight in determining whether he is a responsible dispenser of controlled substances. *See* Resp. Ex. 2 (''Obtaining controlled prescriptions (Percocet and or Xanax) by deception (faking injuries or lying about pain) is a Class B Felony.''); Resp. Ex. 4 (noting that patients were intentionally lying to Respondent ''about the nature of their injuries for the purpose of obtaining'' Percocet and Xanax). Indeed, it is strange that Respondent would expressly refer to Percocet and Xanax in the notices as if these are the only drugs available to treat pain and other medical conditions. I further note that with the exception of Ms. Hodge, each of the Officers was prescribed the same drugs—Percocet and Xanax.

As for RX 3, which catalogued a list of ''unacceptable excuses'' used by persons seeking early refills, and stated that patients should ''not ask [him] for anymore medication until it is your time to get refilled,'' Respondent did not ask either of the undercover officers who sought new prescriptions prematurely why they were doing so. This suggests that notwithstanding this document, Respondent's policy was ''don't ask, don't tell.''

Respondent likewise offered no explanation as to why he failed to properly document his prescribings to the various undercover officers or counsel his patients regarding the proper taking of the drugs.

Because Respondent has failed to acknowledge his wrongdoing, he has not rebutted the Government's *prima facie* case. I therefore conclude that his continued registration would be ''inconsistent with the public interest,'' 21 U.S.C. 823(f), and that his registration should be revoked.[32]

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, *I hereby order* that DEA Certificate of Registration, BM7201267, issued to Laurence T. McKinney, M.D., be, and it hereby is revoked. *I further order* that any pending application to renew or modify the registration be, and it hereby is, denied. This Order is effective August 25, 2008.

Dated: July 17, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–16948 Filed 7–23–08; 8:45 am]

BILLING CODE 4410–09–P

[32] Respondent argues that the ALJ erred in recommending revocation rather than a lesser sanction. DEA has, however, repeatedly held that revocation is the appropriate sanction in cases in which it has been shown that a practitioner has used his prescription-writing authority to deal drugs. *See, e.g., Randi M. Germaine,* 72 FR 51665 (2007); *Peter A. Ahles,* 71 FR 50097 (2006). Moreover, as explained above, Respondent has offered no evidence that he acknowledges his misconduct.

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

Time and Date: 10 a.m., Thursday, July 24, 2008.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Open.

Matters To Be Considered:

1. Request from Horizon One Federal Credit Union to Convert to a Community Charter.
2. Quarterly Insurance Fund Report.
3. Reprogramming of NCUA's Operating Budget for 2008.
4. Proposed Rule: Parts 702 and 704 of NCUA's Rules and Regulations, Prompt Corrective Action; Amended Definition of Post-Merger Net Worth.
5. Final Interpretive Ruling and Policy Statement (IRPS) 08–1, Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act.
6. Request for Board Authorization to Seek Approval for a New Agency Seal.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. E8–16810 Filed 7–23–08; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Notice of permit applications received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 25, 2008. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2009–015. Ron Naveen, President, Oceanities, Inc., P.O. Box 15259, Chevy Chase, MD 20825.

Activity for Which Permit Is Requested: Take and enter Antarctic Specially Protected Areas. The applicant plans to enter various sites, including ASPA 128—Western Short of Admiralty Bay and ASPA 149—Cape Shirreff, to conduct surveys and census of fauna and flora as a continuation of the Antarctic Site Inventory Project. Access to the sites will be by zodiac or helicopter from various cruise ships and/or the HMS ENDURANCE.

Location: Antarctic Peninsula, ASPA 128—Western Short of Admiralty Bay and ASPA 149—Cape Shirreff.

Dates: September 1, 2008 to August 31, 2013.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E8–16877 Filed 7–23–08; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: The Federal Salary Council will meet on September 5 and September 30, 2008, at the times and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The September 5 meeting will be devoted to reviewing information and hearing testimony about existing locality pay area boundaries and the establishment of new locality pay areas. The Council will conduct its other business including reviewing the results of pay comparisons and formulating its recommendations to the President's Pay

Agent on pay comparison methods, locality pay rates, and locality pay area boundaries for 2010 at the September 30 meeting. Both meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to submit testimony or present material to the Council at the meetings.

DATES: September 5, 2008, at 10 a.m. and September 30, 2008, at 10 a.m.

Location: Office of Personnel Management, 1900 E Street, NW., Room 1350, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Office of Personnel Management, 1900 E Street, NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–4264; or e-mail at *pay-performance-policy@opm.gov.*

For the President's Pay Agent:

Linda M. Springer,

Director.

[FR Doc. E8–16940 Filed 7–23–08; 8:45 am]

BILLING CODE 6325–39–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 17a–22; SEC File No. 270–202; OMB Control No. 3235–0196.

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 approval of extension of the existing collection of information provided for in the following rule: Rule 17a–22 (17 CFR 240.17a–22).

Rule 17a–22 under the Securities Exchange Act of 1934 (''Exchange Act'') [1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship, such as pledges, transfer agents, or self-regulatory organizations. Such materials include manuals, notices, circulars, bulletins, lists, and periodicals. The filings with the Commission must be made within ten days after the materials are issued or made generally available. When the Commission is not the clearing agency's appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aids the Commission in determining whether such changes are consistent with the purposes of section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 are registered clearing agencies. The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies but on average there are approximately 200 filings per year per active clearing agency. The Commission staff estimates that each response requires approximately .25 hour (fifteen minutes), which represents the time it takes for a staff person at the clearing agency to properly identify a document subject to the rule, print and make copies, and mail that document to the Commission. Thus, the total annual burden for all active clearing agencies is 300 hours (1,200 multiplied by .25 hour) and a total of 50 hours (1,200 responses multiplied by .25 hour, divided by 6 active clearing agencies) per year are expended by each respondent to comply with the rule.

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.

Comments should be directed to (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) Lewis W. Walker, Acting 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 within 30 days of this notice.

Dated: July 17, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16931 Filed 7–23–08; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78a *et seq.*

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28332; 812–13454]

The Mexico Fund, Inc., et al.; Notice of Application

July 17, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

Summary of Application: Applicants request an order to permit The Mexico Fund, Inc., a closed-end investment company, to make periodic distributions of long-term capital gains with respect to its outstanding common stock as frequently as twelve times each year.

Applicants: The Mexico Fund, Inc. (''Fund'') and Impulsora del Fondo Mexico, S.C. (''Adviser'').

Filing Dates: November 21, 2007, June 26, 2008, and July 14, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 11, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, Sander Bieber, Esq., Dechert LLP, 1775 I Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis,

Branch Chief, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

Applicants represent that they will comply with the representations and conditions in this Application before they rely on the order requested.

1. Applicants represent that the Fund is a registered closed-end investment company registered under the Act. The Fund's investment objective is long-term capital appreciation. The common stock issued by the Fund is listed on the New York Stock Exchange. The Fund has not issued preferred stock. Applicants believe that the Fund's stockholders include investors who desire steady distributions of cash and who will appreciate that the Fund wishes to implement a practice of providing regular distributions pursuant to a plan of distribution as described below.

2. Applicants represent that the Adviser, which is organized as a Mexican ''sociedad civil'' governed by the Federal Civil Code of Mexico, is registered under the Investment Advisers Act of 1940. The Adviser is responsible for the overall management of the Fund and currently has no investment advisory clients other than the Fund.

3. Applicants represent that the Fund's Board of Directors (''Board''), including a majority of the directors who are not interested persons, as defined in section 2(a)(19) of the Act (each an ''Independent Director''), will adopt a plan (''Plan'') to make periodic level distributions with respect to its common stock, based upon a fixed percentage of the Fund's net asset value (''NAV'') or market price per share of its common stock or at least a minimum fixed dollar amount per year. Applicants represent that the Board will request, and the Adviser will provide, such information as is reasonably necessary to an informed determination of whether the Board should adopt the Plan. In particular, the Board and the Independent Directors will review information regarding the purpose and terms of the Plan, the likely effects of the Plan on the Fund's long-term total return (in relation to market price and NAV per common share) and the relationship between the Fund's distribution rate on its common stock under the Plan and the Fund's total return (in relation to NAV per share); whether the rate of distribution would exceed the Fund's expected total return in relation to its NAV per share; and any foreseeable material effects of such Plan on the Fund's long-term total return (in relation to market price and NAV per share). The Independent Directors also will consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and the Fund might have with respect to the adoption or implementation of such Plan. Applicants represent that after considering such information the Board, including the Independent Directors, will approve the Plan with respect to the Fund's common stock provided that the Board, including the Independent Directors, determine that the Plan is consistent with the Fund's investment objectives and in the best interests of the Fund's common stockholders.

4. Applicants represent that the purpose of the Plan would be to permit the Fund to provide its stockholders with a level, periodic distribution. Applicants represent that under the Plan, the Fund would distribute to its common stockholders a fixed percentage of the market price of the Fund's common stock or a fixed percentage of NAV per share or a fixed amount per share which percentage or amount may be adjusted from time to time. Applicants state that the minimum annual distribution rate with respect to the Fund's common stock under the Plan would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Applicants explain that each distribution on the common stock would be at the stated rate then in effect, except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (the ''Code'') for the calendar year. Applicants expect that over time the NAV distribution rate with respect to the Fund's common stock will approximately equal the Fund's total return on NAV.

5. Applicants state that the Board also will adopt policies and procedures under rule 38a–1 under the Act that are reasonably designed to ensure that all notices sent to Fund stockholders with distributions under the Plan (''Notices'') comply with condition II below, and that all other written communications by the Fund or its agents regarding distributions under the Plan will include the disclosure required by condition III below. Applicants state that the Board also will adopt policies and procedures that will require the Fund to keep records that demonstrate the Fund's compliance with all of the conditions of the requested order and that are necessary for the Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notice.

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns underlying section 19(b) and rule 19b–1 is that stockholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.*, estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included in the Fund's annual reports to stockholders and on its IRS Form 1099–DIV, which is sent to each stockholder who received distributions during the year.

4. Applicants further state that the Fund will make the additional disclosures required by the conditions set forth below, and the Fund will adopt compliance policies and procedures in accordance with rule 38a–1 to ensure that all required Notices and disclosures are sent to stockholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plan and the conditions listed below, the Fund would ensure that its stockholders are provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with the Fund's compliance procedures and condition III set forth below will ensure that prospective stockholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Fund to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Fund, which do not continuously distribute shares. According to Applicants, if the underlying concern extends to secondary market purchases of stock of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gain distributions that a fund may make with respect to any one year imposed by rule 19b–1, may prevent the efficient operation of a Plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

7. In addition, Applicants assert that rule 19b–1 may cause fixed regular periodic distributions under the Plan to be funded with returns of capital [1] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the Fund to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

8. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b–1 to permit each fund's common stock to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common stock.

Applicants' Conditions

Applicants agree that the order will be subject to the following conditions:

I. *Compliance Review and Reporting.* The Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the Fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the Fund no less frequently than annually.

II. *Disclosures to Fund Stockholders:*

A. Each Notice to the holders of the Fund's common stock, in addition to the information required by section 19(a) and rule 19a–1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) The average annual total return in relation to the change in NAV for the 5-year period ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. will include the following disclosure:

(a) ''You should not draw any conclusions about the fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan'';

(b) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a

[1] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income' ''; and

(c) ''The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.'' Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to stockholders under rule 30e–1 under the Act, the Fund will:

1. describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. include the disclosure required by condition II.A.2.a above;

3. state, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund stockholders; and

4. describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to stockholders under rule 30e–1 and in each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

III. *Disclosure to Stockholders, Prospective Stockholders and Third Parties:*

A. The Fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common stockholder, prospective common stockholder or third-party information provider;

B. The Fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. The fund will post prominently a statement on its Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. *Delivery of 19(a) Notices to Beneficial Owners:* If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. *Additional Board Determinations if the Fund's Common Stock Trades at a Premium:*

If:

A. The Fund's common stock has traded on the exchange it primarily trades on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Directors:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its stockholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) The reasonably foreseeable effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(3) The Fund's current distribution rate, as described in condition V.B above, compared to with the Fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. *Public Offerings:* The Fund will not make a public offering of the Fund's common stock other than:

A. A rights offering below net asset value to holders of the Fund's common stock;

B. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

C. An offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. The fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date, expressed as a percentage of NAV per share as of such date, is no more than

1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date; and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year.

VII. *Amendments to Rule 19b–1:* The requested relief will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16867 Filed 7–23–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58189; File No. SR–CBOE–2008–75]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Sponsored User Fees

July 18, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on July 15, 2008, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to establish fees applicable to Sponsored Users. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.20A, *Sponsored Users*, governs electronic access for the entry and execution of orders by Sponsored Users[2] with authorized access to Exchange Systems[3] and the applicable requirements that Sponsored Users and Sponsoring Members[4] are required to satisfy in order to engage in a Sponsoring Member/Sponsored User relationship. The Exchange proposes to establish fees specifically applicable to Sponsored Users. The fees are (1) a Sponsored User Inactivity Fee, (2) a Sponsored User Registration Fee, (3) CBOEdirect connectivity fees, and (4) a co-location fee. The proposed fees would be billed to Sponsoring Members through their clearing firms.

Sponsored User Inactivity Fee. The Exchange recently expanded the Sponsored User program, which had previously only applied to CBOE's FLEX and CBSX facilities, to permit electronic access for the entry and execution of orders by Sponsored Users to all other products traded on CBOE.[5] However, the number of Sponsored Users with electronic access to all other products traded on CBOE has been limited to a total of 15 persons or entities (referred to as the 15 ''Sponsored User Slots'').[6] The Exchange proposes to charge an inactivity fee of $5,000 per month that would be charged only if a CBOE Sponsored User (one of the 15 Sponsored User Slots) is not software certified by the Exchange and has not established a production network connection and passed a login test within 90 days of CBOE's acceptance of its Sponsored User registration status. The fee would continue to apply until the Sponsored User has completed all of the foregoing requirements or the Sponsored User's registration status is withdrawn.

Without the fee, a Sponsored User could obtain one of the Sponsored User Slots and choose not to connect to the Exchange. The Exchange believes the proposed fee should provide an appropriate incentive to Sponsored Users to connect to the Exchange and trade. A Sponsored User very easily may avoid assessment of the fee simply by becoming software certified and establishing a network connection to the Exchange as described above.

Sponsored User Registration Fee. The Exchange proposes to charge a one-time fee of $2,500 for each registration of a Sponsored User.

CBOEdirect connectivity fees. The Exchange currently charges members the following monthly fees related to connectivity to CBOEdirect: a $40 per month ''CMI Application Server'' fee for providing member firms with server hardware that enable the firms to connect to CBOE's two Application Protocol Interfaces: CMI (CBOE Market Interface) and Financial Information Exchange (''FIX''), and a $40 per month ''network access port'' fee and a $40 per month ''FIX port'' fee for network hardware the Exchange provides to members for access to the Exchange's network. The Exchange proposes to charge Sponsored Users an $80 per month CMI Application Server fee, $80 per month network access port fee and $80 per month FIX port fee.

Co-location fee. The Exchange provides cabinet space in the CBOE data center for co-locating member firm network and quoting engine hardware, to help members meet their need for high performance processing and low latency. The Exchange currently charges members a co-location fee of $10 per ''U'' of shelf space (which is equal to 1.75 inches). The Exchange proposes to charge Sponsored Users a co-location fee of $20 per ''U'' of shelf space.

[1] 15 U.S.C. 78s(b)(1).

[2] A ''Sponsored User'' is defined in Rule 6.20(A)(a) as a person or entity that has entered into a sponsorship arrangement with a Sponsoring Member for purposes of receiving electronic access to the Exchange System(s).

[3] ''Exchange Systems'' is defined in Rule 6.20A.01 as the FLEX Hybrid Trading System (''FLEX''), CBOE Stock Exchange (''CBSX'') and CBOE.

[4] ''Sponsoring Member'' is defined in Rule 6.20A(b) as a member organization that agrees to sponsor the Sponsored User's access to the Exchange System(s).

[5] *See* Securities Exchange Act Release No. 58051 (June 27, 2008), 73 FR 38260 (July 3, 2008).

[6] *See* Rule 6.20A.01.

The Exchange believes it is equitable and reasonable to charge higher connectivity and co-location fees to Sponsored Users than it charges to members because members are subject to dues and other fees through their membership to help offset the Exchange's systems expenses.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 (''Act'') [7], in general, and furthers the objectives of section 6(b)(4) [8] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the Sponsored User Inactivity Fee should provide an appropriate incentive to Sponsored Users to connect to the Exchange and trade. The Exchange believes the proposed connectivity and co-location fees equitably allocate to Sponsored Users their fair share of Exchange systems expenses.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–75. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2008–75, and should be submitted on or before August 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16930 Filed 7–23–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58194; File No. SR–Phlx–2008–47]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Disclaimer of Warranties

July 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Rule 1107A (NASDAQ OMX Group, Inc. Indexes) to add a disclaimer regarding the accuracy and/or calculation of the NASDAQ–100 Index® (the ''Index'') [5] or options on the Index, warranties of merchantability for purpose or use, and liability for lost profits or damages.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Web site at *http://www.phlx.com/regulatory/reg_rulefilings.aspx.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASDAQ–100 Index® is a mark owned by NASDAQ OMX Group, Inc.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt new Phlx Rule 1107A, which establishes disclaimers in respect of options on the NASDAQ–100 Index® (the ''Index''). The Exchange is proposing to establish new Phlx Rule 1107A as required by the licensing agreement with NASDAQ OMX that allows the Exchange to license, trade, and market options on the Index (the ''Licensing Agreement'').[6]

Proposed Rule 1107A, which is similar in nature to disclaimers regarding other index providers at current Phlx Rules 1104A (SIG Indices, LLLP), 1105A (Standard and Poor's® Index), and 1106A (Lehman Brothers Inc. Indexes)[7] establishes, among other things, disclaimers about the accuracy and/or uninterrupted calculation of the Index or any data included therein; any warranties of merchantability or fitness for a particular purpose or use; and any liability for any lost profits or damages.

The Exchange believes that proposed Phlx Rule 1107A, being similar in concept to current Phlx Rules 1104A, 1105A, and 1106A as well as current rules of other options exchanges,[8] should put NASDAQ OMX on similar footing with other licensors of options on indexes to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change should encourage NASDAQ OMX to continue maintaining the Index upon which options may be traded on the Exchange, thereby providing investors with enhanced investment opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes such waiver is consistent with the protection of investors and the public interest because it would allow for the immediate implementation of a rule similar to rules already in place at the Phlx and at other options exchanges. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2008–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

[6] Pursuant to the Licensing Agreement and the immediately effective filing SR–Phlx–2008–36 proposing to list and trade full value and reduced value options on the Index (NDX and MNX, respectively), *see* Securities Exchange Act Release No. 57936 (June 6, 2008), 73 FR 33481 (June 12, 2008) (SR–Phlx–2008–36), the Exchange began trading NDX and MNX on or about June 16, 2008.

[7] The Exchange noted in its filings to adopt Rules 1104A, 1105, and 1006A that the proposed disclaimers were appropriate given that they were similar to disclaimer provisions of American Stock Exchange Rule 902C relating to indexes underlying options listed on that exchange. *See* Securities Exchange Act Release Nos. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003)(SR–Phlx–2003–21)(adopting Rule 1004A regarding SIG indices); 51664 (May 6, 2005), 70 FR 25641 (May 13, 2005)(SR–Phlx–2005–24)(adopting Rule 1105A regarding S&P 500 and expanding Rule 1104A); and 52102 (July 21, 2005), 70 FR 44144 (August 1, 2005)(SR–Phlx–2005–38)(adopting Rule 1106A regarding Lehman Brothers).

[8] *See for example* disclaimers and limitation of liability at AMEX Rule 902C and at CBOE Rule 24.14.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] Rule 19b–4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–Phlx–2008–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/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 will also be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–47 and should be submitted on or before August 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16934 Filed 7–23–08; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58053; File No. SR–NSCC–2008–03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Support the Processing of Instructions for the Transfer or Reallocation of Underlying Investment Options Within a Variable Insurance Contract

June 27, 2008.

Correction

In FR Doc. No. E8–15251, beginning on page 38479 for Monday, July 7, 2008, the date for this release should be as set forth above.

Dated: July 21, 2008,

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–16933 Filed 7–23–08; 8:45 am]

BILLING CODE 8010–01–P

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form—9 Registrant Claim Form.
SSS Form—21 Claim Documentation Form—Administrative.
SSS Form—23 Claim Documentation Form—Divinity Student.
SSS Form—24 Claim Documentation Form—Hardship to Dependents.
SSS Form—25 Claim Documentation Form—Minister of Religion.
SSS Form—26 Claim Documentation Form—Alien or Dual National.
SSS Form—27 Claim Documentation Form—Postponement of Induction.
SSS Form—109 Student Certificate.
SSS Form—130 Application by Alien for Relief from Training and Service in the Armed Forces of the United States.
SSS Form—152 Alternative Service Employment Agreement.
SSS Form—153 Employer Data Sheet.
SSS Form—156 Skills Questionnaire.
SSS Form—157 Alternative Service Job Data Form.
SSS Form—160 Request for Overseas Job Assignment.
SSS Form—163 Employment Verification Form.
SSS Form—164 Alternative Service Worker Travel Reimbursement Request.
SSS Form—166 Claim for Reimbursement for Emergency Medical Care.

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: July 10, 2008.

Ernest E. Garcia,

Deputy Director.

[FR Doc. E8–16790 Filed 7–23–08; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notification of Policy Revisions, and Requests for Comments on the Percentage of Fabrication and Assembly That Must Be Completed by an Amateur Builder To Obtain an Experimental Airworthiness Certificate for an Amateur-Built Aircraft; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; extension of comment period.

SUMMARY: This notice announces an extension of the comment period for the proposed revisions to Chapter 4, Special Airworthiness Certification, Section 9 of the FAA Order 8130.2F, *Airworthiness Certification of Aircraft and Related Products,* and Advisory Circular (AC) 20–27G, *Certification and Operation of Amateur-Built Aircraft* (AC 20–27G is

the result of combining AC 20–27F and AC 20–139, *Commercial Assistance During Construction of Amateur-Built Aircraft*), as well as for comments on the percentage of fabrication and assembly that must be completed by an amateur builder to obtain an experimental airworthiness certificate for an amateur-built aircraft. These and other related documents are located on the FAA main Web page. The Web link is: *http://www.faa.gov/aircraft/draft_docs/display_docs/index.cfm?Doc_Type=Pubs*.

DATES: Please submit your comments on or before September 30, 2008.

ADDRESSES: You may submit your comments via e-mail to *miguel.vasconcelos@faa.gov,* via fax to (202) 267–8850 (ATTN: Miguel Vasconcelos, AIR–230) or via mail or hand delivery to: Production and Airworthiness Division (AIR–200), Federal Aviation Administration (Room 815), 800 Independence Ave, SW., Washington, DC 20591, ATTN: Miguel Vasconcelos.

FOR FURTHER INFORMATION CONTACT: Frank Paskiewicz, Manager, Production and Airworthiness Division, AIR–200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2008 (73 FR 40652), the FAA published a notice requesting comments on proposed changes to FAA Order 8130.2F and Advisory Circular (AC) 20–27G, as well as comments on the percentage of fabrication and assembly that must be completed by an amateur builder to obtain an experimental airworthiness certificate for an amateur-built aircraft. The comment close date of August 15, 2008 was not specifically posted in that notice and was only available on the FAA Web site. Because some interested parties may not have web access and, therefore, may not have been aware of the original comment deadline, the FAA has decided to extend the comment period by 45 days to September 30, 2008, and to publish this announcement in the **Federal Register**. This extension will also allow more time for the public to participate and provide the FAA with more in-depth comments on the proposed changes.

Issued in Washington, DC on July 21, 2008.

Frank Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. E8–16989 Filed 7–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–29]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 13, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0741, using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katrina Holiday (202) 267–3603, Program Analyst, or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0741.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 21.190(d).
Description of Relief Sought: Cessna Aircraft Company requests relief from the requirements of 14 CFR part 21.190(d) for aircraft manufactured outside the United States to be eligible for a special airworthiness certificate in the light-sport category.

[FR Doc. E8–16860 Filed 7–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of a Tier 1 Environmental Impact Statement for Transit Improvements in the BeltLine Corridor in the City of Atlanta, GA

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement and 4(f) Evaluation.

SUMMARY: The Federal Transit Administration and the Metropolitan Atlanta Rapid Transit Authority (MARTA) are planning to prepare a Tier 1 Environmental Impact Statement (Tier 1 EIS) and 4(f) Evaluation for an approximately 22-mile loop of proposed transit and trail improvements within the City of Atlanta. The Tier 1 EIS will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA), as

well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), enacted in 2005. The purpose of this Notice of Intent (NOI) is to alert interested parties regarding the plan to prepare the Tier 1 EIS; to provide information on the nature of the proposed project; to invite participation in the Tier 1 EIS process, including comments on the scope of the Tier 1 EIS proposed in this notice; and to announce that public scoping meetings will be conducted. Tiering reflects FTA and MARTA's belief that it is necessary to focus on the actual issues ripe for decision at each level of environmental review (40 CFR 1508.28). It is the intent of this preliminary environmental documentation to determine and environmentally evaluate transit mode and general alignment for both the transit and trails in this corridor.

DATES: *Comment Due Date:* Written comments on the scope of the Tier 1 EIS should be sent to Don Williams, Project Manager, MARTA, by September 22, 2008.

Scoping Meetings: Eight public scoping meetings will be held between August 19 and August 21, 2008, at locations indicated under **ADDRESSES** below. An interagency pre-scoping meeting will be held on August 12, 2008, and an interagency post-scoping meeting will be held on August 22, 2008, at MARTA Headquarters.

ADDRESSES: Written comments on the scope of the Tier 1 EIS should be sent to Don Williams, Project Manager, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, NE., Atlanta, GA 30324–3330. Comments may also be offered at the public scoping meetings and via e-mail at *dwa_beltlinestudy@bellsouth.net*.

The dates, times, and locations for the public scoping meetings are as follow:

Meetings 1&2: Tuesday, August 19, 2008, 1 p.m.–3 p.m. and 6 p.m.–8 p.m., Trinity Presbyterian Church, 3003 Howell Mill Road, Room B, Atlanta, GA 30327.

Meetings 3&4: Tuesday, August 19, 2008, 1 p.m.–3 p.m. and 6 p.m.–8 p.m., The Trolley Barn, 963 Edgewood Avenue, NE., Atlanta, GA 30307.

Meetings 5&6: Thursday, August 21, 2008, 1 p.m.–3 p.m. and 6 p.m.–8 p.m., Georgia Hill Neighborhood Center, 250 Georgia Avenue, SE., Atlanta, GA 30312.

Meetings 7&8: Thursday, August 21, 2008, 1 p.m.–3 p.m. and 6 p.m.–8 p.m., Central United Methodist Church, 503 Mitchell Street, SW., Atlanta, GA 30314.

The appropriate federal, state, and local agency offices will be notified individually about the time and location of the interagency scoping meeting.

The locations of the scoping meetings are accessible to persons with disabilities. If translation, signing services, or other special accommodations are needed, please contact Project Hotline at (404) 524–2070 or for hearing impaired TTY (404) 848–4931 at least 48 hours before the meeting. A scoping information packet is available on the project Web site at: *http://www.itsmarta.com/newsroom/beltline.html* or by calling the Project Hotline at (404) 524–2070. Copies will also be available at the scoping meetings.

FOR FURTHER INFORMATION CONTACT: David Schilling, Community Planner, Federal Transit Administration, 230 Peachtree, NW., Suite 800, Atlanta, Georgia 30303, Telephone: (404) 865–5600, Facsimile (404) 865–5605; Don Williams, Manager Regional Planning and Analysis, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, NE., Atlanta, GA 30324–3330, Telephone: (404) 848–4422, Facsimile (404) 848–5132; or Nate Conable, Senior Project Manager, Atlanta BeltLine, Inc., 86 Pryor Street, Suite 200, Atlanta, Georgia 30303, Telephone: (404) 880–4100, Facsimile: (404) 880–0616.

SUPPLEMENTARY INFORMATION:

Description of Study Area and Proposed Project: The BeltLine Corridor contains many of Atlanta's residential neighborhoods, a majority of the parks in the central city area, as well as a significant number of major attractions and points of interest. Transit improvements in the Atlanta BeltLine Corridor would create a new 22-mile transit loop, including potential new stations on an existing rail right-of-way. The BeltLine Corridor would connect to the MARTA heavy rail system at or near four locations: Lindbergh Center, Inman Park/Reynoldstown, West End, and Ashby Stations. Improvements in the BeltLine Corridor would support the MARTA bus network, other regional bus services, future High Capacity Transit projects along I–75, I–285, Memorial Drive and Buford Highway, the pending commuter rail service between Lovejoy and downtown Atlanta, and the proposed Peachtree Streetcar. The Atlanta BeltLine Corridor also includes approximately 33 miles of new multi-use trails in a linear park located primarily along the corridor, with extensions connecting to parks and other trails.

Purpose of and Need for the Proposed Project: The purpose of the BeltLine Corridor transit and trails improvements are to improve local and regional mobility, address accessibility and connectivity, and support the City of Atlanta's redevelopment plans. The need for the proposed project stems from population and employment growth that is related to the occurring and planned redevelopment within the City and the City's desire to provide better linkages to parks throughout the area and to increase overall availability of accessible greenspace.

Alternatives: Through a process of technical evaluation and public input during the previous MARTA BeltLine study, the *Inner Core Alternatives Analysis* (January 2007), a large number of alternatives was examined, leading to the agency selection of a Locally Preferred Alternative (PA). This decision was based on the PA being the best performing alternative and preferred by the public and major stakeholders. The preliminary list of alternatives to be considered in the Tier 1 Draft EIS will include the No Build Alternative and the PA (henceforth referred to as the Build Alternative):

- No Build Alternative: The No Build Alternative assumes that no transportation infrastructure improvements would be made in the project area apart from improvements that have already been committed to by the Georgia Department of Transportation, the City of Atlanta, and MARTA and are included in the regional Transportation Improvement Program. The No Build Alternative would also assume that no trail improvements would be made other than what is currently committed to by the City of Atlanta and Atlanta BeltLine Inc.
- Build Alternatives: The Build Alternatives are to be based on the PA established in the Alternatives Analysis and would evaluate variations in the alignment based on feasibility and potential for impacts. In addition to any alternatives uncovered during public scoping, the Build Alternatives would include a new 23-mile transit service, primarily on existing rail corridor and identify locations for new stations on the alignment, with connections to MARTA's heavy rail system at its Lindbergh Center, Inman Park/Reynoldstown, West End, and Ashby Stations. The Build Alternatives would also incorporate a system of connecting trails that would run adjacent to the transit line and provide vital connections to existing and proposed recreational facilities around the Atlanta BeltLine Corridor.

This preliminary range of alternatives may be supplemented during the public scoping process and development of the Tier 1 Draft EIS.

The Tiered EIS Process and the Role of the Participating Agencies and the Public: The purpose of the Tier 1 EIS process is to serve as the basis for the decision regarding the project design concept and scope and will support the acquisition of the right-of-way for corridor preservation. The Tier 1 DEIS will preliminarily screen and evaluate a range of social, environmental, and economic impacts resulting from the mode choice, general alignment, and approximate location of stations. Impacts to the affected environment will be screened and evaluated based upon information uncovered during public scoping and interagency coordination efforts. MARTA will prepare an Annotated Outline for the DEIS following this scoping. This gives assurances that the Tier 1 document will focus on the issues ripe for consideration and that scoping has accomplished its intended purpose.

The Tier 1 EIS will build upon the extensive screening, environmental and technical studies and public comments and outreach conducted to date. Tiering will allow the FTA and MARTA to conduct planning and NEPA activities for this large project and focus on those decisions that are ready to be made at this level of analysis. The Tier 1 analysis will serve as a basis for establishing the general alignment of the proposed transit and trail corridor along the entire 23-mile loop. Conceptual locations of stations, trail connections, and other facilities will be determined, as will the choice of transit technology. The scope of analysis in the Tier 1 EIS will be appropriate to the level of detail necessary to make informed decisions and will receive input from the public and the reviewing agencies.

A goal of the Tier 1 EIS and these decisions is to support future ROW preservation along the entire 22-mile loop. FTA allows the advance acquisition of a limited amount of real property for hardship or protective purposes as defined in the NEPA regulation at 23 CFR 771.117(d)(12). Also, in accordance with 49 U.S.C. 5324(c), the acquisition of pre-existing railroad ROW may be evaluated for NEPA purposes separately from the future transit and trails project that will ultimately be built on that ROW under certain conditions and with certain understandings. With these exceptions, all corridor parcels cleared for ROW preservation and purchase in the Tier 1 document will be individually identified and documented.

This Tier 1 EIS will also meet the requirements of the Georgia Environmental Policy Act (GEPA). GEPA requires the assessment of any state-level action to determine whether or not the action may significantly adversely affect the quality of the environment. A project that is subject to NEPA review has met the requirements of GEPA and does not require separate documentation.

The Build Alternative would be finalized after the circulation of the Tier 1 DEIS to the public and then included in the Tier 1 Final EIS. After completion the FEIS, the Federal Transit Administration (FTA) will issue a Record of Decision (ROD) on the Preferred Alternative which will include selection of transit mode and general alignment. The Tier 1 EIS will serve as the point of departure for future project refinement and subsequent, in depth environmental analysis required for Tier 2 analysis when the project advances further through the project development process. NEPA regulations and SAFETEA–LU provisions call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and MARTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies,'' (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for the proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) establish a plan for coordinating public and agency participation in and comment on the scoping information packet. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program has been developed and a public and agency involvement Coordination Plan will be created. The program includes a project Web site: *http://www.itsmarta.com/newsroom/beltline.html;* outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; establishment of a technical advisory committee and stakeholder advisory committee; a public hearing on the release of the Tier I DEIS; and development and distribution of project newsletters. The Coordination Plan will be posted to this Web site.

The purpose and need for the proposed project have been preliminarily identified in this notice. We invite the public and participating agencies to consider the preliminary statement of purpose and need for the proposed project, as well as the alternatives proposed for consideration. Suggestions for modifications to the statement of purpose and need for the proposed project and any other alternatives that meet the purpose and need for the proposed project are welcome and will be given serious consideration. Comments on potentially significant environmental impacts that may be associated with the proposed project and alternatives are also welcome. There will be additional opportunities to participate in the scoping process at the public meetings announced in this notice.

In accordance with 23 CFR 771.105 (a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR Part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), and Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), Section 4(f) of the Department of Transportation Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: July 17, 2008.

Yvette G. Taylor,

Regional Administrator, FTA Region 4.

[FR Doc. E8–16990 Filed 7–23–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0070]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BIG DOG.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0070 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 25, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0070. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BIG DOG is:

Intended Use: ''pleasure charter.''

Geographic Region: ''California coast.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: July 15, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–16889 Filed 7–23–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2008 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0099.

Type of Review: Extension.

Title: Administrative Remedies—Closing Agreements.

Description: This is a written agreement between TTB and regulated taxpayers used to finalize and resolve certain tax-related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts is proven.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0075.

Type of Review: Revision.

Title: Proprietors or Claimants Exporting Liquors, TTB REC 5900/1.

Description: Distilled spirits, wine, and beer may be exported from bonded premises without payment of excise taxes or they may be exported if their taxes have been paid and the exporters may claim drawback of the taxes paid. The recordkeeping requirement makes it possible to trace movement of distilled spirits, wine, and beer, thus enabling TTB officers to verify the amount of these liquors eligible for exportation without payment of tax or exportation subject to drawback.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 7,200 hours.

OMB Number: 1513–0073.

Type of Review: Revision.

Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback, TTB REC 5530/2.

Description: Records required to be maintained by manufacturers of nonbeverage products are used to prevent diversion of drawback spirits to beverage use. The records are necessary to maintain accountability over these spirits. The records make it possible to trace spirits using audit techniques, thus enabling TTB officers to verify the amount of spirits used in nonbeverage products and subsequently claimed as eligible for drawback of tax. The record retention requirement for this information collection is 3 years.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 10,521 hours.

OMB Number: 1513–0023.

Type of Review: Revision.

Title: Environmental Information; and Supplemental Information on Water Quality Consideration under 33 U.S.C. 1341(a).

Form: TTB F 5000.29 and 5000.30.

Description: TTB F 5000.29 is used to determine whether an activity will have a significant effect on the environment and to determine if a formal

environmental impact statement or an environmental permit is necessary for a proposed operation. TTB F 5000.30 is used to make a determination as to whether a certification or waiver by the applicable State water quality agency is required under section 21 of the Federal Water Pollution Control Act (33 U.S.C. 1341(a)). Manufacturers that discharge a solid or liquid effluent into navigable waters submit this form.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 4,000 hours.

OMB Number: 1513–0021.

Type of Review: Extension.

Title: Formula and Process for Non Beverage Product.

Forms: TTB 5164.1.

Description: Businesses using tax-paid distilled spirits to manufacture non beverage products may receive drawback (i.e., a refund or remittance) of tax, if they can show that the spirits were used in the manufacture of products unfit for beverage use. This showing is based on the formula for the product, which is submitted on TTB Form 5154.1.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 2,444 hours.

OMB Number: 1513–0019.

Type of Review: Revision.

Title: Application for Amended Basic Permit under the Federal Alcohol Administration Act.

Forms: TTB 5100.18.

Description: TTB F 5100.18 is completed by permittees who change their operations in a manner that requires a new permit or receive a new notice. The information allows TTB to identify the permittee, the changes to the permit or business, and to determine whether the applicant still qualifies for a basic permit.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 600 hours.

OMB Number: 1513–0018.

Type of Review: Revision.

Title: Application for Basic Permit under the Federal Alcohol Administration Act.

Forms: TTB 5100.24.

Description: TTB 5100.24 will be completed by persons intending to engage in a business involving beverage alcohol operations at a distilled spirits plant, bonded winery, or wholesaling/importing business. The information collected allows TTB to identify the applicant and the location of the business, and to determine whether the applicant qualifies for a permit.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 2,800 hours.

OMB Number: 1513–0054.

Type of Review: Revision.

Title: Offer in Compromise of liability incurred under the provisions of Title 26 U.S.C. enforced and administered by the Alcohol and Tobacco Tax and Trade Bureau.

Forms: TTB 5640.1, 5600.17, 5600.18.

Description: TTB F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the IRC. If accepted, the offer in compromise is a settlement between the government and the party in violation in lieu of legal proceedings or prosecution. If the party is unable to pay the offer in full, TTB F 5600.17 and 5600.18 are used to gather financial information to develop an installment agreement to allow the party to pay without incurring a financial hardship. The agency is requesting a program change. The burden will increase because of two new forms. The added forms are filed only when the Offer In Compromise (OIC) form is filed, in conjunction with the OIC form. When the OIC is established one of the added forms are completed by those who are unable to pay in full.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 140 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–16922 Filed 7–23–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2008 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0041.

Type of Review: Extension.

Title: Imposition of Special Measure against VEF Banka.

Description: FinCEN is issuing this notice of the renewal of the rulemaking that imposes a special measure against joint stock company VEF Banka (VEF banks) as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318 A.

Respondents: Individuals or households.

Estimated Total Reporting Burden: 5,000 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–16954 Filed 7–23–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 18, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 25, 2008 to be assured of consideration.

Executive Office of Asset Forfeiture

OMB Number: 1505–0152.
Type of Review: Extension.
Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency.
Form: TD 92–22.46.
Description: Form TD F 92–22.46 is necessary for the application for receipt of seized assets by Federal, State and Local Law Enforcement agencies.
Respondents: State and local governments
Estimated Total Reporting Burden: 2,500 hours.
Clearance Officer: Office of Domestic Finance, (202) 622–1276, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Rm 5205, Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,
Treasury PRA Clearance Officer.
[FR Doc. E8–16958 Filed 7–23–08; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8109, 8109–B and 8109–C

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 Forms 8109 and 8109–B, Federal Tax Deposit Coupon, and Form 8109–C, FTD Address Change.

DATES: Written comments should be received on or before September 22, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Deposit Coupon (Forms 8109 and 8109–B) and FTD Address Change (Form 8109–C).
OMB Number: 1545–0257.
Form Number: 8109, 8109–B, and 8109–C.
Abstract: Federal tax deposit coupons (Forms 8109 and 8109–B) are used by taxpayers to deposit certain types of taxes at authorized depositaries or in certain Federal Reserve Banks. Form 8109–C, FTD Address Change, is used to change the address on the FTD coupon. The information on the deposit coupon is used by the IRS to monitor compliance with the deposit rules and insure that taxpayers are depositing the proper amounts within the proper time periods with respect to the different taxes imposed by the Internal Revenue Code.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations, farms, not-for-profit institutions, and Federal, state, local or tribal governments.
Estimated Number of Responses: 62,513,333.
Estimated Time per Respondent: 2 minutes.
Estimated Total Annual Burden Hours: 1,841,607.

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: July 15, 2008.

Glenn P. Kirkland,
IRS Reports Clearance Officer.
[FR Doc. E8–16913 Filed 7–23–08; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–PC

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 1120–PC, U.S. Property and Casualty Insurance Company Income Tax Return.

DATES: Written comments should be received on or before September 22, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (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: U.S. Property and Casualty Insurance Company Income Tax Return.

OMB Number: 1545–1027.

Form Number: Form 1120–PC.

Abstract: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,200.

Estimated Time per Respondent: 154 hr., 35 min.

Estimated Total Annual Burden Hours: 649,218.

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: July 17, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–16915 Filed 7–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1096

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 1096, Annual Summary and Transmittal of U.S. Information Returns.

DATES: Written comments should be received on or before September 22, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, 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: Annual Summary and Transmittal of U.S. Information Returns.

OMB Number: 1545–0108.

Form Number: 1096.

Abstract: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W–2G) to the IRS service centers. Under Internal Revenue Code section 6041 and related regulations, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize, categorize, and process the forms being filed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and State, local or tribal governments.

Estimated Number of Responses: 4,420,919.

Estimated Time per Response: 14 min.

Estimated Total Annual Burden Hours: 1,016,812.

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: July 15, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–16916 Filed 7–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–45–91]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, CO–45–91 (TD 8529), Limitations on Corporate Net Operating Loss Carryforwards. (§ 1.382–9).

DATES: Written comments should be received on or before September 22, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, (202) 622–6688, 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: Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1275.

Regulation Project Number: CO–45–91.

Abstract: Sections 1.382–9(d)(2)(iii) and (d)(4)(iv) of the regulation allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies for the benefits of Internal Revenue Code section 382(1)(5). Regulation section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulation retroactively, or revoke a prior Code section 382(1)(6) election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time per Respondent: The estimated annual time per respondent with respect to the §§ 1.382–9(d)(2)(iii) and (d)(4)(iv) statements is 15 minutes. The estimated annual time per respondent with respect to the § 1.382–9(d)(6)(ii) election is 1 hour.

Estimated Total Annual Burden Hours: 200 hours.

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: July 17, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–16917 Filed 7–23–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 8 77(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2008.

Last name	First name	Middle name/ initials
Long	Claire	L.
Lee	Stephen	Hyukzae.
Popov	Vaseo	Stoilov.
Spanfelner	Margaret	V.
Choe	Young	Cha.
Dufault	Christopher	Paul.
Auyang	Evan	Chichun.
Ho	Eric	Tszlung.
Leung	Terence	Wing Ho.
Han	Je	Hee.
Nickelson	Rosemarie	Christiane.
Dake	Janice	Maureen
Day	Patricia	Ann.
Henneaux	Franicoise	Maurice.
Epstein	Aaron	Daniel.
Lamoureux	Kathleen.	
Turk	Akiva.	
Van Zeebroek	Celia.	
Alexander	Anastasia.	
Van Zeebroek	Sarah.	
Cha	Christina.	
Hwang	Jisoo.	
Hong	Jin.	Hwa.

Dated: July 7, 2008.

Angie Kaminski,

Manager Team 103, Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E8–16919 Filed 7–23–08; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of 2008 American Buffalo Gold Proof Coin Pricing

ACTION: Notification of 2008 American Buffalo Gold Proof Coin Pricing.

SUMMARY: The United States Mint is setting the price for the 2008 American Buffalo One Ounce Gold Proof Coin.

Pursuant to the authority that 31 U.S.C. 5111(a) and 5112(a)(11), & (q) grant the Secretary of the Treasury to mint and issue gold coins, and to prepare and distribute numismatic items, the United States Mint will mint and issue American Buffalo One Ounce Gold Proof Coins.

In accordance with 31 U.S.C. 5112(q)(5) & 9701(b)(2)(B), the United States Mint is setting the price of these coins to reflect recent increases in the market price of gold, as follows:

Description	Price
2008 American Buffalo One Ounce Gold Proof Coin	$1,199.95

FOR FURTHER INFORMATION CONTACT: Gloria C. Eskridge, Associate Director for Sales and Marketing, United States Mint, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Dated: July 18, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–16901 Filed 7–23–08; 8:45 am]

BILLING CODE 4810–02–P

Corrections

Federal Register

Vol. 73, No. 143

Thursday, July 24, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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

Correction

In notice document E8–15185 appearing on page 38999 in the issue of Tuesday, July 8, 2008, make the following corrections:

1. On page 38999, in the second column, under the **FOR FURTHER INFORMATION CONTACT** heading, in the second line, ''Muhammad Ban'' should read ''Muhammad Bari''.

2. On the same page, in the same column, under the same heading, in the fourth line, ''*Muhammad.ban@us.army.mil.*'' should read ''*Muhammad.bari@us.army.mil.*''.

[FR Doc. Z8–15185 Filed 7–23–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Proposed Amendment to PTE 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

Correction

In notice document E8–15848 appearing on page 40384 in the issue of Monday, July 14, 2008 make the following correction:

In the first column, in the second paragraph, in the **DATES** section is corrected to read: ''Written comments must be submitted to the office shown in the **ADDRESSES** section on or before September 12, 2008.''

[FR Doc. Z8–15848 Filed 7–23–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
July 24, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2008–0032; 91200–1231–9BPP–L2]

RIN 1018–AV62

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2008–09 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This proposed rule also provides the final regulatory alternatives for the 2008–09 duck hunting seasons.

DATES: You must submit comments on the proposed early-season frameworks by August 4, 2008. The Service Migratory Bird Regulations Committee (SRC) will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2009 spring/summer migratory bird subsistence seasons in Alaska on July 30 and 31, 2008. All meetings will commence at approximately 8:30 a.m. Following later **Federal Register** documents, you will be given an opportunity to submit comments for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2008.

ADDRESSES: You may submit comments on the proposals 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–AV62; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

The SRC will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2008

On May 28, 2008, we published in the **Federal Register** (73 FR 30712) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2008–09 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 28 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. As an aid to the reader, we reiterate those headings here:

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
   i. September Teal Seasons
   ii. September Teal/Wood Duck Seasons
   iii. Black ducks
   iv. Canvasbacks
   v. Pintails
   vi. Scaup
   vii. Mottled ducks
   viii. Wood ducks
   ix. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On June 18, 2008, we published in the **Federal Register** (73 FR 34692) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 18 supplement also provided detailed information on the 2008–09 regulatory schedule and announced the SRC and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the regulatory alternatives for the 2008–09 duck hunting seasons. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2008–09 season.

We have considered all pertinent comments received through June 30, 2008, on the May 28 and June 18, 2008, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 17, 2008.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 25–26, 2008, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2008–09 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl.

Participants at the previously announced July 30–31, 2008, meetings will review information on the current

status of waterfowl and develop recommendations for the 2008–09 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments to the Director on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://fws.gov/migratorybirds/reports/report.html*.

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions during the 2008 May waterfowl survey were characterized in many areas by a delayed spring compared to several preceding years. Drought in many parts of the traditional survey area contrasted sharply with record amounts of snow and rainfall in the eastern survey area.

Traditional Survey Area (U.S. and Canadian Prairies)

Although spring was delayed in much of the traditional survey area, field crews reported that habitat conditions were suitable for nesting at the time of the survey. Much of the prairie potholes experienced drought conditions this spring and many semi-permanent wetlands and livestock dugouts were dry. At the time of the survey this area was considered to be in fair to poor condition, with the exceptions being regions with temporary and seasonal water in southeastern South Dakota, and areas of western South Dakota that received abundant rain and snowfall in early May; conditions were classified as good in both of these areas. Parts of the prairie pothole region experienced heavy rains following completion of the survey. This may improve habitat conditions for late nesters and may improve the success of re-nesting attempts.

The parklands were drier in 2008 than in 2007 when excess water created much additional waterfowl habitat; still, this area was classified as fair to good overall with most seasonal and semi-permanent wetlands full. A late April snowstorm recharged wetlands in some areas of the northern parklands and these areas were classified as excellent.

Bush (Alaska, Northern Manitoba, Northern Saskatchewan, Northwest Territories, Yukon Territory, Western Ontario)

In the boreal forest, spring break-up was later in 2008 than in recent years, with locally variable snowfall and, consequently, variable runoff that resulted in habitat conditions ranging from fair in the east to good in the west. Most large lakes were still frozen on May 20 in the Northwest Territories; however, warmer temperatures in late May led to habitat conditions suitable for nesting during the survey period. Good conditions were present throughout Alaska, with slightly late spring conditions in some coastal areas.

Eastern Survey Area

In the eastern survey area, a cold winter with heavy snows and colder than average spring temperatures delayed spring conditions by 1–2 weeks relative to the early springs of preceding years. An exception was northern Quebec, which experienced an early spring with most ice melting by the last week of May. Quickly rising temperatures combined with spring rains led to flooding in parts of Maine and the Maritimes, which disrupted spring nesting phenology; as a result habitat conditions in these areas were classified as fair. Elsewhere in the East, abundant water in most lakes and wetlands resulted in habitat conditions being classified as good or excellent.

Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 6.6 million. This represents a 1.0 percent decrease from 2007 and is 45 percent above the 1955–2007 average.

Sandhill Cranes

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-Continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The Central Platte River Valley, Nebraska, spring index for 2008, uncorrected for visibility bias, was 472,128 sandhill cranes. The photo-corrected, 3-year average for 2005–07 was 364,281, which is within the established population-objective range of 349,000–472,000 cranes.

All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2007–08. About 9,808 hunters participated in these seasons, which was similar to the number that participated in the previous season. Hunters harvested 18,610 MCP cranes in the U.S. portion of the Central Flyway during the 2007–08 seasons, which was 6 percent higher than the estimated harvest for the previous year. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Alaska, Canada, and Mexico combined) was 13,567 during 2007–08. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 36,567 birds, which is similar to the previous year's estimate. The long-term (1982–2004) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2007 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a record high count of 22,822 cranes. The 3-year average for 2004, 2005, and 2007 (no survey was conducted in 2006) was 20,732 sandhill cranes, which is within established population objectives of 17,000–21,000 for the RMP. Hunting seasons during 2007–08 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulted in a harvest of 820 RMP cranes, a 10 percent decrease from the harvest of 907 the year before.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2008 indicate that the number of displaying woodcock in the Eastern Region in 2008 was unchanged from 2007, while the Central Region experienced a 9.2 percent decline. However, we note that measurement of short-term (i.e., annual) trends tends to give estimates with larger variances and

is more prone to be influenced by climatic factors that may affect local counts during the survey.There was no significant trend in woodcock heard in the Eastern Region during 1998–2008; however, there was a declining trend of −1.5 percent per year in the Central Region. This represents the fifth consecutive year that the 10-year trend estimate for the Eastern Region did not indicate a significant decline, while it is the first time since 2003 that the Central Region had a declining trend. There were long-term (1968–2008) declines of 1.2 percent per year in the Eastern Region and 1.1 percent per year in the Central Region.

Wing-collection Survey data indicate that the 2007 recruitment index for the U.S. portion of the Eastern Region (1.6 immatures per adult female) was 4 percent higher than the 2006 index, and 4 percent lower than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.5 immatures per adult female) was 10 percent lower than the 2006 index and 8 percent below the long-term average.

Band-tailed Pigeons and Doves

Annual counts of Interior band-tailed pigeons seen and heard per Breeding Bird Survey (BBS) route have not changed significantly since implementation of the BBS in 1966; however, they decreased significantly over the last 10 years. The 2007 harvest was estimated to be 4,800 birds. For Pacific Coast band-tailed pigeons, annual BBS counts of birds seen and heard per route have decreased since 1966, but they have not changed significantly over the last 10 years. According to the Pacific Coast Mineral Site Survey, annual counts of Pacific Coast band-tailed pigeons seen per mineral site have increased significantly since the survey was experimentally implemented in 2001. The 2007 harvest was estimated to be 12,700 birds.

Analyses of Mourning Dove Call-count Survey data over the most recent 10 years indicated no significant trend for doves heard in either the Eastern or Western Management Units while the Central Unit showed a significant decline. Over the 43-year period, 1966–2007, all 3 units exhibited significant declines. In contrast, for doves seen over the 10-year period, no significant trends were found for any of the three Management Units. Over 43 years, no trend was found for doves seen in the Eastern and Central Units while a significant decline was indicated for the Western Unit. The preliminary 2007 harvest estimate for the United States was 20,550,000 doves. A banding program is underway to obtain current information in order to develop mourning dove population models for each Management Unit to provide guidance for improving our decision-making process with respect to harvest management.

The two key States with a white-winged dove population are Arizona and Texas. California and New Mexico have much smaller populations.

The Arizona Game and Fish Department (AGFD) monitors white-winged dove populations by means of a call-count survey to provide an annual index to population size. The index peaked at a mean of 52.3 doves heard per route in 1968, but fell precipitously in the late 1970s. The index has stabilized to around 25 doves per route in the last few years. In 2008, the mean number of doves heard per route was 26.9. AGFD also monitors harvest. Harvest during the 15-day season (September 1–15) peaked in the late 1960s at ~740,000 birds and has since stabilized at around 100,000 birds. The 2007 Harvest Information Program (HIP) estimate was 127,600 birds. In 2007, Arizona redesigned their dove harvest survey questionnaire to sample only from hunters registered under HIP. In the future, AGFD and HIP harvest estimates should be more comparable than they have been in the past.

In Texas, white-winged doves continue to expand their breeding range. Nesting by whitewings has been recorded in most counties, except for the northeastern part of the state primarily. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a continuing increase in whitewing abundance. A new DISTANCE sampling protocol was implemented for Central and South Texas for 2007, and expanded in 2008 so that coverage is almost statewide. Once fully implemented, biologists should have the ability to obtain a good estimate of white-winged dove abundance in Texas. While 2008 data were not available at this time, 2007 surveys indicated an estimated abundance throughout surveyed areas (representing about 20 percent of the State) of about 2,300,000 whitewings. Total Statewide harvest has averaged about 2 million birds annually.

The Texas Parks and Wildlife Department is working to improve management of white-winged doves in Texas in the following ways: (1) Expanding current surveys of spring populations to encompass areas throughout the State that now have breeding populations; (2) Completing the Tamaulipas-Texas White-winged Dove Strategic Plan so that there are consistent and comparable harvest management strategies, surveys, research, and data collection across the breeding range of the species; (3) Expanding operational banding in 2008 that was begun in 2007 to derive estimates of survival and harvest rates; (4) Implementing a wing-collection survey for recruitment rates in lieu of the feeding flight and production surveys; (5) Estimating probability of detection for more accurate estimates of breeding populations within urban environments; and (6) Evaluating and estimating reproductive success in urban areas to better estimate population increases.

In California, BBS data (although imprecise due to a small sample size) indicate that there has been a significant increase in the population between 1968 and 2007. According to HIP surveys, the preliminary harvest estimate for 2007 was 67,900. In New Mexico, BBS data (very imprecise due to a small sample size) also showed a significant increase over the long term. In 2007, the estimated harvest was 64,000.

White-tipped doves are believed to be maintaining a relatively stable population in the Lower Rio Grande Valley (LRGV) of Texas. DISTANCE sampling procedures in the LRGV include whitetips. However, until the sampling frame includes rural Rio Grande corridor habitats, not many whitetips will be reported. Sampling frame issues are expected to be resolved by next year. However, annual white-tipped dove harvest during the special season is only averaging 3,000–4,000 birds.

Review of Public Comments

The preliminary proposed rulemaking (May 28 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2008–09 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the May 28 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks

performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 28 **Federal Register** document.

General

Written Comments: An individual commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and the Flyway Council process.

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

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations. Both Committees further recommended not implementing the western mallard Adaptive Harvest Management (AHM) protocol.

The Central Flyway Council recommended not implementing the western mallard AHM protocol.

The Pacific Flyway Council recommended implementing the Service's proposal for a revised protocol for managing the harvest of mallards in Western North America. They further recommended inclusion of the following initial components:

(1) Regulation packages that are currently in place in the Pacific Flyway and generally described as Liberal, Moderate, Restrictive, and Closed, with associated target harvest rates of 12, 8, 4, and 0 percent, respectively;

(2) A harvest objective that corresponds to no more than 95 percent of the Maximum Sustained Yield (MSY) on the yield curve (they further note that current harvest estimates suggest that the current Pacific Flyway mallard harvest is at 80 percent of MSY);

(3) Consider use of a weighting factor within the decision matrix that would soften the knife-edge effect of optimal policies when regulation changes are warranted;

(4) No change in the duck regulation provisions for Alaska, except implementation through the western mallard AHM strategy;

(5) An optimization based only on western mallards; and

(6) Clarification of the impacts of removing Alaska from the mid-continent mallard strategy.

They also requested that the Service explore options of incorporating mallards and other waterfowl stocks derived from surveyed areas in Canada important to the Pacific Flyway (e.g., Alberta, Northwest Territories) into the decision process in the future.

Service Response: As we stated in the May 28 **Federal Register**, we intend to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2008–09 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for certain species, such as canvasbacks, scaup, and pintails).

In recent years, the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways has been based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In the May 28 **Federal Register**, we also stated our intent for the 2008–09 hunting season to consider setting hunting regulations in the Pacific Flyway based on the status and dynamics of a newly defined stock of ''western'' mallards. For now, western mallards would be defined as those breeding in Alaska (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys).

We agree with the Pacific Flyway Council's recommendation to implement the western mallard AHM protocol for the 2008–09 hunting season. However, implementation of this new AHM decision framework for western mallards requires several other considerations. First, we believe that implementation of this new protocol necessitates that we ''rescale'' the closed season constraint in the existing mid-continent mallard (identified above as those breeding in central North America) AHM strategy to 4.75 million mallards from the existing 5.5 million mallards. This ''rescaling'' is necessary to adjust for removing mallards breeding in Alaska from the mid-continent population and assigning them to the western mallard population. Second, the optimal regulatory policies for western mallards (and mid-continent mallards) would be based on independent optimization. That is, the optimum regulations for mid-continent mallards and western mallards would be determined independently, and based upon the breeding stock that contributes primarily to each Flyway (western mallards for the Pacific Flyway and mid-continent mallards for the Central and Mississippi Flyways). Third, that the current regulatory alternatives remain in place for the Pacific Flyway, while we continue to work with the Flyway to develop regulatory options necessary to effect a substantive increase or decrease in the harvest rate of western mallards. And lastly, regulations in Alaska would continue to be addressed as an early season issue and future consideration of Alaska regulatory changes would be based on the status of the western

mallards rather than mid-continent mallards.

Additionally, since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). We will continue this protocol for the 2008–09 season.

Regarding incorporation of a one-step constraint into the AHM process, our incorporation of a one-step constraint into the AHM process was addressed by the AHM Task Force of the Association of Fish and Wildlife Agencies (AFWA) in its report and recommendations. This recommendation will be included in considerations of potential changes to the set of regulatory alternatives at a yet to be determined later date. Currently, there is no consensus on behalf of the Flyway Councils on how to modify the regulatory alternatives. We believe that the new Supplemental Environmental Impact Statement for the migratory bird hunting program (see NEPA Consideration section), currently in preparation, may be an appropriate venue for considering such changes in a more comprehensive manner that involves input from all Flyways.

We will propose a specific regulatory alternative for each of the Flyways during the 2008–09 season after survey information becomes available later this summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/mgmt/AHM/AHM-intro.htm*.

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council recommended that the current restriction of two hens in the 4-bird mallard daily bag limit be removed from the ''liberal'' package in the Atlantic Flyway to allow the harvest of 4 mallards of any sex.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2007.

Service Response: We do not support the Atlantic Flyway Council's proposal to remove the hen mallard restriction in the ''liberal'' alternative for the Atlantic Flyway. The AHM approach requires that the regulatory packages remain relatively constant over time to insure relatively consistent expected impacts of the various harvest management alternatives. Additionally, we strongly support the development and inclusion of a process to review and revise the basic regulatory packages. As we stated above, we believe that the new Supplemental Environmental Impact Statement for the migratory bird hunting program (see NEPA Consideration section), currently in preparation, may be an appropriate venue for considering such changes in a more comprehensive manner that involves input from all Flyways. We do not support a frequent and/or piecemeal approach to the review and revision of the basic regulatory packages and believe that such an approach would not be consistent with the existing AHM process.

Therefore, the regulatory alternatives proposed in the May 28 **Federal Register** will be used for the 2008–09 hunting season (see accompanying table for specifics). In 2005, the AHM regulatory alternatives were modified to consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed during the late-season regulations process. For those species with harvest strategies (canvasbacks, pintails, black ducks, and scaup), those strategies will be used for the 2008–09 hunting season.

D. Special Seasons/Species Management

i. September Teal Seasons

Utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 6.6 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Central and Mississippi Flyway and a 9-day September teal season in the Atlantic Flyway is appropriate in 2008.

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council endorsed the interim international harvest strategy for black ducks, with the following modifications: (1) The original criteria of a 25 percent change in the 5-year running average from the long-term (1998–2007) breeding population (BPOP) should be changed to a 15 percent change measured by a 3-year running average, and (2) the original criteria of a 5-year running average to measure parity should be changed to a 3-year running average.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council endorsed the agreement in concept and the interim approach to the harvest management of black ducks as outlined by the Black Duck International Management Group.

Service Response: For several years we have consulted with the Atlantic and Mississippi Flyway Councils, the Canadian Wildlife Service, and provincial wildlife agencies in eastern Canada concerning the development of an international harvest strategy for black ducks. As we described in the June 18 **Federal Register**, in 2008, U.S. and Canadian waterfowl managers developed a draft interim harvest strategy that was designed to be employed by both countries over the next three seasons (2008–09 to 2010–11), allowing time for the development of a formal strategy based on the principles of Adaptive Harvest Management. The interim harvest strategy is prescriptive, in that it would call for no substantive changes in hunting regulations unless the black duck breeding population, averaged over the most recent 3 years, exceeds or falls below the long-term average breeding population by 15 percent or more. It would allow additional harvest opportunity (commensurate with the population increase) if the 3-year average breeding population exceeds the long-term average by 15 percent or more, and would require reduction of harvest opportunity if the 3-year average falls below the long-term average by 15 percent or more. The strategy is designed to share the black duck harvest equally between the two countries; however, recognizing incomplete control of harvest through regulations, it will allow realized harvest in either country to vary between 40 and 60 percent.

We support the interim international black duck harvest strategy put forward by the International Black Duck Management Group and propose to adopt its use for the 2008–09, 2009–10, and 2010–11 seasons, unless it is supplanted by a new, fully adaptive strategy prior to the 2010–11 season. We note that this strategy was recommended by the Mississippi Flyway Council, and differs from the Atlantic Flyway Council's recommendation only in that it employs a 5-year running average to assess harvest parity between Canada and the United States, rather than the 3-year average recommended by the Atlantic Flyway Council. We support the 5-year average negotiated in the International Agreement.

iv. Canvasbacks

Council Recommendations: The Atlantic Flyway Council recommended that the canvasback harvest strategy be

modified to include a provision to allow a daily bag limit of 2 canvasbacks when the predicted breeding population is greater than 750,000 birds.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended an alternative canvasback harvest management strategy that uses threshold levels based on breeding population size in order to determine bag limits. These threshold levels would allow 2 canvasbacks per day when the population is above 800,000, 1 canvasback per day when the population is between 400,000 and 800,000, and close the season when the population drops below 400,000.

The Central Flyway Council recommended maintaining the current canvasback harvest strategy and updating harvest predictions in the current model.

The Pacific Flyway Council requested revision of the canvasback harvest strategy to include a harvest management prescription for a two-bird, full season option when the canvasback breeding population and predicted harvest will sustain the population at or above 600,000.

Service Response: In the May 28 and June 18 **Federal Registers**, we indicated our support for modification of the existing canvasback strategy to allow for a 2-bird daily bag limit when the projected breeding population in the next year exceeds an established threshold level. Our support was contingent on receiving Flyway Council and public input regarding the exact threshold level to be employed for the bag limit increase. Based on our recent biological assessment this threshold should fall between 600,000 and 750,000 canvasbacks projected as the next year's breeding population.

After consideration of the various Flyway Council proposals, we have modified the existing canvasback harvest strategy to allow a 2-bird bag when the breeding population in the following year is projected to be at least 725,000 birds. This approach is consistent with the guidance previously offered by the Service. Further, we prefer to retain use of the existing canvasback strategy rather than replace it with the more prescriptive approach advocated by the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council. In addition, we will undertake a review of the existing canvasback strategy and model structures as time and opportunity permit.

v. Pintails

Council Recommendations: The Atlantic Flyway Council recommended several modifications and considerations for the proposed pintail derived harvest strategy. They recommended we continue exploration of a derived strategy versus a prescribed strategy and consider a closure constraint. They also commented that Flyway-specific bag limits may not be needed to maintain the desired harvest distribution.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended continued use of the current prescribed northern pintail harvest management strategy until they can see further modeling results of emphasizing a management objective that minimizes the frequency of closed and partial seasons.

The Central Flyway Council recommended that the proposed derived pintail harvest strategy not be adopted and recommended continued use of the current prescribed strategy.

The Pacific Flyway Council recommended that the current prescribed harvest management protocol for pintail be continued in 2008.

Service Response: Based on Flyway Council comments and recommendations, we propose to continue the use of the current pintail harvest strategy for the 2008–09 season. We will continue to work with the Flyway Councils to address their concerns on a derived strategy over the next year.

vi. Scaup

Council Recommendations: The Atlantic Flyway Council recommended implementation of the proposed scaup harvest strategy in 2008 conditional upon several modifications:

(1) A harvest management objective that achieves 95 percent of the long-term cumulative harvest when the breeding population is less than 4.0 million birds;

(2) Seasons remain open when the breeding population is at or above 2 million scaup;

(3) Agreement to use alternative methodology developed by the Atlantic Flyway Technical Section to predict scaup harvests in the Atlantic Flyway;

(4) Allow a ''hybrid'' season option for the Atlantic Flyway that allows for at least 20 days of the general duck season to have a daily bag limit of at least 2 while the remaining days would have a daily bag limit of 1;

(5) A ''restrictive'' harvest package in the Atlantic Flyway consisting of a 20-day season with a daily bag limit of 2, and a 40-day season with a daily bag limit of 1;

(6) A ''moderate'' harvest package in the Atlantic Flyway consisting of a 60-day season with a daily bag limit of 2;

(7) A ''liberal'' harvest package in the Atlantic Flyway consisting of a 60-day season with a daily bag limit of 3;

(8) Designation of the proposed strategy as ''interim'' and subject to immediate reconsideration if alternative/competing scaup population models are available that will inform management decisions; and

(9) Reconsideration of the model elements after 3 years.

The Council also urged us to expedite the exploration of alternative/competing models describing scaup population dynamics that may be used to inform a harvest management strategy.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended we not adopt the proposed scaup harvest strategy and urged us to delay implementation until some alternative models can be developed.

The Central Flyway Council recommended that we delay implementation of the proposed scaup harvest strategy until alternative models are developed and evaluated.

The Pacific Flyway Council supported the implementation of a scaup harvest strategy in 2008, with the following conditions:

(1) A ''shoulder'' strategy objective that corresponds to 95 percent of MSY;

(2) Revision of harvest prediction models to provide a greater capacity to predict Pacific Flyway scaup harvest; and

(3) Revision of flyway harvest allocations to recognize proportions of greater scaup in flyway harvests.

They also urged us to continue to work on alternative models to incorporate into the decision framework as soon as possible.

Written Comments: Several non-governmental organizations expressed concerns about the proposed scaup harvest strategy and potential scaup bag limit reductions. Both organizations urged consideration of alternative models. One organization also submitted a detailed review of the scaup harvest strategy by a review panel.

Service Response: The continental scaup (greater *Aythya marila* and lesser *Aythya affinis* combined) population has experienced a long-term decline over the past 20 years. Over the past several years in particular, we have continued to express our growing concern about the status of scaup. The

2007 breeding population estimate for scaup was 3.45 million, essentially unchanged from the 2006 estimate, and the third lowest estimate on record.

In the May 28 **Federal Register**, we reviewed the actions we have taken over the last few years to synthesize data relevant to scaup harvest management and frame a scientifically-sound scaup harvest strategy (for a complete list of reports see *http://www.fws.gov/migratorybirds/reports/reports.html*). We also solicited Flyway Council feedback regarding alternative approaches to developing and implementing a scaup harvest strategy, seeking specific feedback on three alternative courses of action:

(1) Delay implementation of any strategy and continue to work on the alternative model(s) of population dynamics;

(2) Implement the strategy proposed in the June 8 and July 23, 2007, **Federal Registers** (72 FR 31789 and 72 FR 40194) and continue to work on the alternative model(s); or

(3) Discontinue work on alternative models and implement the strategy proposed last year.

In addition, we sought feedback from the Flyway Councils regarding several policy issues. These included the specific objectives that would be used to derive a scaup harvest strategy, the appropriate Flyway-specific harvest models that will be used in part to determine Flyway-specific regulatory alternatives, and feedback regarding flyway-specific combinations of bag limit and season length that would meet target harvest levels under each regulatory package (restrictive, moderate, and liberal).

After considering Flyway Council feedback, we proposed in the June 18 **Federal Register** to adopt the scaup harvest strategy as originally proposed last year (June 8 and July 23, 2007, **Federal Registers**, 72 FR 31789 and 72 FR 40194). We stated then, and continue to believe, that an informed, scientifically-based decision process is far preferable to any other approach. Further, we noted that we had been patient in allowing additional time for review of the proposed strategy by the Flyway Councils and general public. We acknowledge and support the comments received that suggest additional models based on changing carrying capacity should be investigated and used if they can be developed and are supported by existing scaup population data. However, we note that we consider all strategies currently employed for species-specific harvest regulation to be subject to further analysis, review and improvement as new information becomes available, and we intend to pursue such improvements for the proposed scaup strategy.

We have considered the Flyway Councils' recommendations. At this time, we believe that the decision-making framework for scaup proposed last year provides the best available scientific basis for regulatory decision-making. Thus, we propose to implement this harvest strategy for scaup in 2008.

Regarding the specifics of the various Flyway Council recommendations on the proposed strategy, we support the recommendation of the Pacific Flyway Council to implement a revised version of the Pacific Flyway harvest model since this model does provide for slightly improved harvest predictions over our initially proposed model.

While we do not support the alternative harvest model proposed by the Atlantic Flyway Council, we understand the Council's concerns regarding the initial harvest model we proposed and request that the Flyway continue to work with us to develop a harvest model with broader support within the Atlantic Flyway.

We also support the recommendations of the Atlantic and Pacific Flyway Councils that the harvest management objective for scaup should be to achieve 95 percent of the maximum sustainable harvest. We do not currently support the Atlantic Flyway Council's recommendations that an objective of 95 percent of maximum sustainable harvest be in effect until the scaup population exceeds a breeding population of 4 million and that a closed season constraint of 2 million scaup be included in the objective function. We believe that these particular recommendations should be reviewed and considered by all four Flyways.

We also do not accept the Pacific Flyway's recommendation that the flyway-specific harvest allocation be modified to reflect the distribution of harvest of greater and lesser scaup based on the belief that the status of greater scaup is not of concern. The monitoring programs for scaup do not currently support species-specific management and we believe that additional effort is required to ascertain the species-specific status and harvest potential of greater and lesser scaup prior to considering this recommendation further. Additionally, we feel that any questions of harvest allocation need to be addressed broadly by all four flyways as this recommendation would alter the harvest allocation for all flyways.

Finally, we do not support the Atlantic Flyway Council's recommendation for a hybrid season as it is currently presented. We are concerned that this season configuration may not result in the necessary harvest reduction under a ''restrictive'' package due to the timing and duration of the 2-bird daily bag portion of the season that potentially could be selected by individual States.

Consistent with all harvest strategies, we remain committed to working with the Flyway Councils to continue to refine the assessment and decision-making framework and to improve the scientific basis for scaup regulatory decisions.

Given our decision to implement the strategy in 2008, it is critical that we receive recommendations from the Flyway Councils this July on season lengths and daily bag limits that would define Flyway-specific ''restrictive,'' ''moderate,'' and ''liberal'' regulatory alternatives that are predicted to achieve Flyway-specific harvest allocations under each package. It is our intent that, once defined, these packages would remain fixed in each Flyway for a period of 3 years at which time they would be re-examined in light of realized scaup harvests.

Lastly, we would like to acknowledge the report of the scaup harvest strategy review panel, but note that many of the committee's concerns have been previously addressed during the development and review process that has been ongoing since 2003. However, several comments dealt with specific technical issues that we agree are worthy of additional investigation. Nonetheless, we do not believe that such work precludes the use of the best assessment currently available to determine the appropriate level of harvest of scaup. Much of the focus of the comments received has been toward the development of competing models, and we acknowledge that such model(s) would be desirable. We note, however, that alternative models as described in the review panel report do not presently exist and that there are considerable technical hurdles to their development. Specific details of the review panel's report, all the comments received, and our more detailed technical responses can be found on our Web site at *http://fws.gov/migratorybirds/reports/report.html* or at *http://www.regulations.gov*.

viii. Wood Ducks

Council Recommendations: The Atlantic Flyway Council provided the following comments on the proposed wood duck harvest strategy:

(1) The Council endorses the use of the Potential Biological Removal method for calculating allowable harvest;

(2) Adult males should be the cohort to monitor;

(3) The management objective should be MSY, with the test criteria that the upper 95 percent confidence interval of the 3-year running average of both northern and region-wide adult male observed kill rates not exceed MSY based on their respective allowable kill rates;

(4) Should monitoring show impact on northern males, the harvest strategy should revert to a 2-bird daily bag limit;

(5) Bag limits should be allowed to differ between flyways; and

(6) The strategy should be adopted in 2008.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council endorsed use of the Potential Biological Removal method to assess wood duck harvest potential and provided the following guidance on outstanding wood duck harvest management policy issues:

(1) Monitor adult male kill rates from the Atlantic and Mississippi Flyways combined to determine whether actual kill rates exceed allowable kill rates;

(2) Use the point of Maximum Sustained Yield (½ r_{max}), combined with a test criteria requirement that the upper 95 percent confidence interval of the observed kill rate be below the allowable kill rate, as the management objective;

(3) Allow wood duck bag limits to differ between the Atlantic and Mississippi Flyways; and

(4) Implement in the 2008–09 season.

The Central Flyway Council recommended that the Central Flyway be included in the development and implementation of the wood duck harvest strategy for the Atlantic and Mississippi Flyways.

Written Comments: In a joint recommendation submitted at the June 25 Service Regulations Committee meeting, the Atlantic, Mississippi, and Central Flyway Councils recommended:

(1) Endorsement of the use of the Potential Biological Removal (PBR) method for calculating allowable harvest;

(2) Bag limits should be allowed to differ between flyways;

(3) The cohorts to monitor for the Atlantic Flyway are both range-wide and northern adult males banded in the Atlantic Flyway:

(4) The cohort to monitor for the Mississippi and Central Flyways is range-wide adult males banded in the Mississippi and Central Flyway;

(5) The management objective should be allowable kill rate (AKR), with the test criteria that the upper 95% confidence interval of the 3-year running average of the monitored cohort observed kill rates not exceed AKR;

(6) The strategy, including 3-bird bag limit, should be adopted for an experimental 3-year period beginning in 2008; and

(7) The Service should calculate allowable kill rates that are specific to the Atlantic Flyway, and specific to the Central and Mississippi Flyways combined before the experimental period is complete.

Service Response: In the May 28 **Federal Register**, we reported on the significant technical progress that had been made in estimating the harvest potential of wood ducks in the Atlantic and Mississippi Flyway. This progress included our preparation of a scoping document describing how our assessment of the harvest potential could fit within an overall harvest strategy for wood ducks (see *http://www.fws.gov/migratorybirds/reports/reports.html*).

While we have not formally proposed a wood duck harvest strategy, we stated our support for a wood duck harvest strategy based on the Potential Biological Removal method, with the management objective of 95 percent confidence that harvest will not exceed an allowable kill rate equal to the estimated harvest rate which would achieve the maximum long-term sustainable harvest. We further stated in the June 18 **Federal Register** that we planned to evaluate feedback from the Flyways in order to make a determination whether it would be feasible to consider implementation of a wood duck harvest strategy for the Atlantic, Mississippi, and Central Flyways in 2008. After considering the Flyway Councils' comments and recommendations, we do not support adoption of a wood duck harvest strategy at this time. We do, however, continue to strongly support the development of such a strategy and request the Flyways continued help and cooperation in developing one. Our delay in adopting the strategy is based largely on the fact that our current assessment of harvest potential did not evaluate an east/west split, nor did it consider separate monitoring of kill rates of Atlantic Flyway and Mississippi/Central Flyway wood ducks, which would be required by this new proposal. Additionally, we support an approach that treats the eastern population of wood ducks as a whole and are willing to work with the Flyways to determine the appropriate cohort for monitoring kill rates. We believe that additional dialogue is needed to decide upon the appropriate monitoring cohort, and clarify other aspects of this new proposal. We look forward to continued work with the Flyway Councils to complete this important harvest strategy.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended allowing a 10-day experimental extension of the September Resident Canada goose season in Delaware from September 16 to September 25 consistent with September Canada goose seasons in Atlantic Population (AP) zones in the adjacent States of Pennsylvania and New Jersey and other States in the Atlantic Flyway. They requested that this experimental season be permitted for a 3-year period, at which time an analysis of direct band recoveries will be conducted to determine if the harvest of AP Canada geese exceeds 10 percent of the overall goose harvest during Delaware's 10-day extension of the early season. This extended season will not incorporate the ''expanded hunting methods'' and would be implemented in 2008.

The Pacific Flyway Council recommended allowing Wyoming to modify its current framework that allows 4 geese per season to a 4-bird possession limit.

Service Response: We support the Atlantic Flyway Council's request to allow a 10-day extension of Delaware's September Canada goose season on an experimental basis for 3 years. We note that Delaware's evaluation plan meets the criteria currently set forth by the Service for experimental Canada goose seasons. Further, we would also note that we plan to review the efficacy of these criteria in the near future, but we do not believe that such a review will have any impact on this proposal.

We also support the Pacific Flyway Council's recommendation regarding Wyoming and note that this requested possession limit change falls within previously established frameworks for September Canada goose seasons.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2008.

Service Response: We concur. As we stated last year (72 FR 40194), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to

consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Central and Pacific Flyway Councils recommended using the 2008 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,633 birds as proposed in the allocation formula using the 3-year running average. They further recommended that a new RMP greater sandhill crane hunt area be established in Uinta County, Wyoming.

The Pacific Flyway Council recommended modifying Wyoming's RMP hunt areas by: (1) Expanding the hunt area in Lincoln County to include the Hams Fork drainage, and (2) expanding Area 6 in the Bighorn Basin to include all of Park, Bighorn, Hot Springs and Washakie Counties. The Council also recommended initiating a limited hunt for Lower Colorado River sandhill cranes in Arizona, with the goal of the hunt being a limited harvest of 6 cranes in January. To limit harvest, Arizona would issue permit tags to hunters and require mandatory checking of all harvested cranes. To limit disturbance of wintering cranes, Arizona would restrict the hunt to one 3-day period. Arizona would also coordinate with the National Wildlife Refuges where cranes occur.

Service Response: Last year the Pacific Flyway Council recommended, and we approved, the establishment of a limited hunt for the Lower Colorado River Valley Population (LCRVP) of sandhill cranes in Arizona (72 FR 49622). However, the population inventory on which the LCRVP hunt plan is based was not completed last year. Thus, the Arizona Game and Fish Department chose to not conduct the hunt last year. We continue to support the continuation of the 3-year experimental framework for this hunt conditional on successful monitoring being conducted as called for in the Flyway hunt plan for this population.

Our final environmental assessment (FEA) on this new hunt can be obtained by writing Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird management, 911 NE 11th Avenue, Portland, Oregon 97232–4181, or it may be viewed via the Service's home page at *http://fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov*.

Regarding the establishment of a new RMP greater sandhill crane hunt area in Uinta County, Wyoming, and the Pacific Flyway Council's recommended modification of several of Wyoming's RMP hunt areas, we agree. All of these areas are within existing RMP hunt plans and RMP harvest is controlled by the RMP crane harvest allocation identified in the RMP hunt plan.

16. Mourning Doves

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that States within the Eastern Management Unit should be offered a 70-day season and 15-bird daily bag limit for the 2008–09 mourning dove hunting season, and the dichotomous hunting season structure should be eliminated.

The Atlantic Flyway Council, the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Central Flyway Council submitted interim mourning dove harvest management strategies for the Eastern Management Unit and the Central Management Unit for implementation in 2009.

Service Response: We concur with the recommendation to eliminate dichotomous bag limit choice and standardize the dove hunting framework to a 70-day season with a 15-bird daily bag limit in the Eastern Management Unit beginning with the 2008–09 season. Our assessment indicates that the increase in harvest will be minimal. We agree that this will be a simplification in the regulations and facilitate future harvest evaluations.

We also accept and endorse the interim harvest strategies for the Central and Eastern Management Units and await the submittal of an interim harvest strategy for the Western Management Unit in late July. The interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2004, each management unit submitted its respective strategy, but the strategies used different datasets and different approaches or methods. After initial submittal and review in 2006, we requested that the strategies be revised, using similar, existing datasets among the management units along with similar decision-making criteria. In January 2008, we recommended that, following approval by the respective Flyway Councils in March, they be submitted in 2008 for endorsement by the Service with implementation for the 2009–10 hunting season.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended maintaining status quo in the Alaska early season framework, except for increasing the daily bag limit for canvasbacks to 2 per day with 6 in possession, and increasing the daily bag limit for brant to 3 per day with 6 in possession.

Service Response: We concur with the Pacific Flyway Council's recommendation for an increase in the daily bag and possession limit for brant. However, we do not support increasing the canvasback daily bag limit to 2 birds per day for the 2008–09 season. Our proposal is based on two factors: (1) There is no biological data currently available to justify a 2-bird daily bag limit for canvasbacks for the 2008–09 season, and (2) we note that prior to this year, the canvasback strategy had no provisions for a daily bag limit greater than one bird. In recognition of our change to the canvasback harvest strategy (discussed above in 1.D.iv. Canvasbacks), we request that the Pacific Flyway, in conjunction with Alaska, develop a recommendation on how to effectively incorporate Alaska into any future regulations when 2-bird daily bags are offered during the late season regulatory process.

20. Puerto Rico

Council Recommendations: The Atlantic Flyway Council recommended that Puerto Rico be permitted to adopt a 20-bird bag limit for doves in the aggregate for the next three hunting seasons, 2008–2010. Legally hunted dove species in Puerto Rico are the Zenaida dove, the white-winged dove, and the mourning dove. They also recommended that the 20-bird aggregate bag limit should include no more than 10 Zenaida doves and no more than 3 mourning doves.

Service Response: We concur.

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations

regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at *http://www.fws.gov/migratorybirds*.

Endangered Species Act Consideration

Prior to issuance of the 2008–09 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter, the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

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

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

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

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

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

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

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

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

The rules that eventually will be promulgated for the 2008–09 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 14, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2008–09 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2008, and March 10, 2009.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota,

Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 20). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 15 Canada geese.

Experimental Seasons

Canada goose seasons of up to 10 days during September 16–25 may be selected in Delaware. The daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

General Seasons

Experimental Seasons

Canada goose seasons of up to 7 days during September 16–22 may be selected in the Northwest Goose Zone in Minnesota. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag Limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

1. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

3. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Special Seasons in the Pacific Flyway:

Arizona may select a season for hunting sandhill cranes within the range of the Lower Colorado River

Population (LCR) of sandhill cranes, subject to the following conditions:

Outside Dates: Between January 1 and January 31.

Hunting Seasons: The season may not exceed 3 days.

Bag Limits: Not to exceed 1 daily and 1 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: The season is experimental. Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Pacific Flyway Council.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 25) in the Atlantic, Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 25) on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 20) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Oregon, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits: Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit: The daily bag limit may not exceed 15 mourning and white-winged doves in the aggregate.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

2. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

3. In Units 9, 10, 17 and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A–C), 10 (Unimak Island portion), and 17.

Brant—A daily bag limit of 3 and a possession limit of 6.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Oklahoma

North Zone—That portion of the State north of a line extending east from the Texas border along U.S. Highway 62 to Interstate 44, east along Oklahoma State Highway 7 to U.S. Highway 81, then south along U.S. Highway 81 to the Texas border at the Red River.

Southwest Zone—The remainder of Oklahoma.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.—Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to US 17 in Midway, US 17 in Midway to US 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of US 158 and east of NC 35.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to US 2; east along US 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area: Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to

Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending west from the Indiana border along Interstate Highway 70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 156, west along Illinois Route 156 to A Road, north and west on A Road to Levee Road, north on Levee Road to the south shore of New Fountain Creek, west along the south shore of New Fountain Creek to the Mississippi River, and due west across the Mississippi River to the Missouri border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: Beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk

Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to US Highway 81, then south on US Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

South Dakota

Special Early Canada Goose Unit: Entire state of South Dakota *except* the counties of Bennett, Bon Homme, Brule, Buffalo, Charles Mix, Custer east of SD HW 79 and south of French Creek, Dewey south of 212, Fall River east of SD HW 71 and US HW 385, Gregory, Hughes, Hyde south of US HW 14, Lyman, Potter west of US HW 83, Stanley, and Sully.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Maryland

Special Teal Season Area: Calvert, Caroline, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties and those parts of Cecil, Harford, and Baltimore Counties east of Interstate 95; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along

State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, then east along U.S. Highway 30 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I-135; south on I-135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M-20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I-75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley

(Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I-35 to Wichita, north on I-135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana

The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I-25; on the north by I-25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma

That portion of the State west of I–35.

South Dakota

That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, thence northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, thence north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, thence southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, thence southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, thence southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma State line, thence south along the Texas-Oklahoma state line to the south bank of the Red River, thence eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, thence southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, thence southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, thence southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, thence east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, thence south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, thence south on Interstate Highway 45 to State Highway 342, thence to the shore of the Gulf of Mexico, and thence north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line. (B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, thence west along the County line to Park Road 22 in Nueces County, thence north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, thence west and north along State Highway 358 to its junction with State Highway 286, thence north along State Highway 286 to its junction with Interstate Highway 37, thence east along Interstate Highway 37 to its junction with U.S. Highway 181, thence north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, thence south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, thence north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, thence south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, thence south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and thence south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2008-09 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. E8–16515 Filed 7–23–08; 8:45 am]

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Federal Register

Thursday,
July 24, 2008

Part III

Environmental Protection Agency

40 CFR Part 799

Testing of Certain High Production Volume Chemicals; Second Group of Chemicals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2007–0531; FRL–8373–9]

RIN 2070–AD16

Testing of Certain High Production Volume Chemicals; Second Group of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) to require manufacturers, importers, and processors of certain high production volume (HPV) chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. EPA has preliminarily determined that: Each of the 19 chemical substances included in this proposed rule is produced in substantial quantities and that there is or may be substantial human exposure to each of them; there are insufficient data to reasonably determine or predict the effects on health or the environment of the manufacture, distribution in commerce, processing, use, or disposal of the chemicals, or of any combination of these activities; and the testing program proposed here is necessary to develop such data. Data developed under this proposed rule will provide critical information about the environmental fate and potential hazards associated with these chemicals which, when combined with information about exposure and uses, will allow the Agency and others to evaluate potential health and environmental risks and to take appropriate follow-up action. Persons who export or intend to export any chemical substance included in the final rule would be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D. EPA has also taken steps, as described in this document, to consider animal welfare and to provide instructions on ways to reduce or in some cases eliminate animal testing, while at the same time ensuring that the public health is protected.

DATES: Comments must be received on or before October 22, 2008.

Written requests to present oral comments must be received on or before October 22, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0531, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–0531. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0531. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Follow the on-line instructions to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul Campanella or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone numbers: (202) 564–8091 or (202) 564–8173; e-mail addresses: *campanella.paul@epa.gov* or *schaeffer.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in § 799.5087(j) of the proposed regulatory text. Any use of the term ''manufacture'' in this document will encompass ''import,'' unless otherwise stated. In addition, as described in Unit

V., once the Agency issues a final rule, any person who exports, or intends to export, any of the chemical substances included in the final rule will be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

• Manufacturers (defined by statute to include importers) of one or more of the 19 subject chemical substances (NAIC codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

• Processors of one or more of the 19 subject chemical substances (NAIC codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IV.E. and consult § 799.5087(b) of the proposed regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult either of the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. Can I Request an Opportunity to Present Oral Comments to the Agency?

You may submit a request for an opportunity to present oral comments. This request must be made in writing. If such a request is received on or before October 22, 2008, EPA will hold a public meeting on this proposed rule in Washington, DC. This written request must be submitted to the mailing or hand delivery addresses provided under **ADDRESSES**. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent document in the **Federal Register**. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments at the public meeting, you should follow the instructions provided in the subsequent **Federal Register** document announcing the public meeting.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to issue a test rule under TSCA section 4(a)(1)(B) (15 U.S.C. 2603(a)(1)(B)) that would require manufacturers and processors of 19 chemical substances to conduct testing for environmental fate (including five tests for physical/chemical properties and biodegradation), ecotoxicity (in fish, Daphnia, and algae), acute toxicity, genetic toxicity (gene mutations and chromosomal aberrations), repeat dose toxicity, and developmental and reproductive toxicity. The chemicals are HPV chemicals, i.e., chemicals with a production/import volume equal to or greater than 1 million pounds (lbs.) per year. A detailed discussion regarding efforts to enhance the availability of screening level hazard and environmental fate information about HPV chemicals can be found in a **Federal Register** notice which published on December 26, 2000 (Ref. 1).

The tests are screening level tests which are part of the Screening Information Data Set (SIDS) (see Unit II.D.). Some or all of these tests are being proposed as required tests for a particular chemical substance, depending upon what data are already available for that substance.

This action also follows an earlier testing action for certain HPV chemicals (see ''Testing of Certain High Production Volume Chemicals; Proposed Rule'' (Ref. 2) and ''Testing of Certain High Production Volume Chemicals; Final Rule'' (Ref. 3).

At a future date, EPA plans to propose testing for additional HPV chemicals as the Agency learns more about the chemicals with respect to human exposure, release, and sufficiency of data and experience available on the potential hazards.

B. What is the Agency's Authority for Taking this Action?

EPA is proposing this test rule under section 4(a)(1)(B) of TSCA (15 U.S.C. 2603(a)(1)(B)).

Section 2(b)(1) of TSCA (15 U.S.C. 2601(b)(1)) states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statute to include import] and those who process such chemical substances and mixtures[.]'' To implement this policy, TSCA section 4(a)(1) mandates that EPA require by rule that manufacturers and/or processors of chemical substances and mixtures conduct testing if the Administrator finds that:

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data [.]

If EPA makes these findings for a chemical substance or mixture, the Administrator shall require by rule that testing be conducted on that chemical substance or mixture to develop data about health or environmental effects for which there is an insufficiency of data and experience, and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of the chemical substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment. TSCA section 4(a)(1).

Once the Administrator has made a finding under TSCA section 4(a)(1)(A) or 4(a)(1)(B), EPA may require any type of health or environmental effects testing necessary to address unanswered questions about the effects of the chemical substance or mixture that are relevant to whether the manufacture, distribution in commerce, processing, use, or disposal of the chemical substance or mixture, or any combination of such activities, presents an unreasonable risk of injury to health or the environment. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or (B)(i) findings. This approach is explained in more detail in EPA's TSCA section 4(a)(1)(B) Final Statement of Policy (''B'' policy) (Ref. 4, pp. 28738–28739).

In this proposed rule, EPA would use its broad TSCA section 4(a) authority to obtain data necessary to support the development of preliminary or ''screening level'' hazard and risk characterizations for certain HPV chemical substances specified in Table 2 in § 799.5087(j) of the proposed regulatory text. EPA has made preliminary findings for these chemical substances under TSCA section 4(a)(1)(B) that: They are produced in substantial quantities; there is or may be substantial human exposure to them; existing data are insufficient to determine or predict their health and environmental effects; and testing is necessary to develop such data.

C. Why is EPA Taking this Action?

On April 21, 1998, EPA initiated a national effort to empower citizens by providing them with knowledge about the most widespread chemicals in commerce. A major objective of this effort is to make certain basic information about the environmental fate and potential health and environmental hazards associated with HPV chemicals available to the public. Mechanisms to collect or, where necessary, develop needed data on U.S. HPV chemicals include the voluntary HPV Challenge Program, certain international efforts, and TSCA section 4 rules.

1. *Voluntary HPV Challenge Program.* The voluntary HPV Challenge Program, officially launched in late 1998, was created to ensure that a baseline set of data on approximately 2,800 HPV chemicals would be made available to EPA and the public. HPV chemicals are manufactured or imported in amounts equal to or greater than 1 million lbs. per year and were identified for this program through data reported under the TSCA Inventory Update Rule (IUR) during 1990.

The data set sought by the voluntary HPV Challenge Program is known as the Screening Information Data Set (SIDS) that was developed by the Organization for Economic Cooperation and Development (OECD), of which the United States is a member. SIDS provides an internationally agreed upon set of test data for screening high production volume chemicals for human and environmental hazards, and will assist the Agency and others to make an informed, preliminary judgment about the hazards of HPV chemicals.

Since the Program's inception in 1998, industry chemical manufacturers and importers have participated in the Challenge by sponsoring 2,250 chemicals. More than 350 companies and 100 consortia have sponsored chemicals directly in the Program while additional companies/consortia have sponsored chemicals indirectly in an international counterpart to the voluntary HPV Challenge Program, the International Council of Chemical Associations (ICCA) HPV Initiative. HPV chemicals that are not sponsored in the Program may be subject to a test rule under TSCA section 4 where, among other things, these chemicals lack needed testing. The voluntary HPV Challenge Program is further described in a **Federal Register** document which published on December 26, 2000 (Ref. 1) and on the voluntary HPV Challenge Program website (*http://www.epa.gov/chemrtk*).

Under the voluntary HPV Challenge Program, alternatives to the testing proposed under this proposed rule were available. For example, under the OECD HPV SIDS Program, some instances have been identified where, using chemical category approaches, less than a full set of SIDS tests for every chemical in the category has been judged sufficient for screening purposes. In addition, the OECD HPV SIDS Program allows some use of structure activity relationship (SAR) analysis for individual chemicals. These strategies have the potential to reduce the time required to complete the program, the number of tests actually conducted, and the number of test animals needed.

EPA advocated the use of categories or SAR approaches in the voluntary HPV Challenge Program and provided support for their use by developing guidance documents to assist industry and others in constructing scientifically defensible categories (Ref. 45) and SAR (Ref. 48). While EPA encouraged the use of scientifically appropriate categories of related chemicals and SAR under the voluntary HPV Challenge Program, these approaches are not included in this proposed rule. EPA has not identified any chemicals in this proposal for which category and SAR approaches would be appropriate. In addition, EPA believes that the incorporation of such elements in a test rule would require complex, time consuming, and intensive procedural steps, such as multi-phase rulemaking, without a corresponding benefit.

In the proposed test rule (Ref. 2) for the final HPV SIDS test rule (Ref. 3), EPA specifically solicited comments and suggestions on procedures that would allow inclusion of such approaches in TSCA section 4 HPV SIDS rulemaking. The procedures suggested by commenters on that proposed rule would have required complex, time consuming, and resource-intensive procedural steps, such as multi-phase rulemaking. As a result, EPA did not incorporate these suggestions into the final rule. In addition, EPA did not identify, nor did the commenters bring to EPA's attention, any possibilities that would have allowed inclusion of a category or SAR approach within the final test rule for any specific chemicals included in the final test rule (Ref. 19).

Although the Agency believes that none of the chemicals included in this proposed rule appear to be candidates for category or SAR approaches, persons who believe that a chemical under this

proposed rule can be dealt with using a category or SAR approach are encouraged to submit appropriate information, along with their rationale which substantiates this belief, during the comment period on this proposed rule. If, based on submitted information and other information available to EPA, the Agency determines that a chemical is appropriate for consideration under a category or SAR approach, and that practicable measures are available at the time to modify the proposed testing requirement, EPA will take such measures as are necessary to avoid unnecessary testing in the final rule.

2. *Certain international efforts*. The voluntary HPV Challenge Program is designed to make maximum use of scientifically adequate existing test data and to avoid unnecessary and duplicative testing of U.S. HPV chemicals. Therefore, EPA is continuing to participate in the voluntary international efforts, complementary to the voluntary HPV Challenge Program, that are being coordinated by the OECD to secure basic hazard information on HPV chemicals in use worldwide, including some of those on the U.S. (1990) HPV chemicals list (Ref. 5). This includes agreements to sponsor a U.S. HPV chemical under either the OECD HPV SIDS Program (Ref. 6), including sponsorship by OECD member countries beyond the United States, or the international HPV Initiative that is being organized by the ICCA (Ref. 7).

The OECD HPV SIDS Program seeks the development of test data, if such data are not already available, related to 6 health and environmental effects endpoints for international HPV chemicals (see Unit II.D.). The SIDS data set has been internationally agreed upon by the 29 member countries of the OECD as providing the minimum data set required to make an informed preliminary judgment about the hazards of a given HPV chemical.

The ICCA consists of representatives of chemical industry trade associations from the United States, Europe, Japan, Australia, Canada, Mexico, Brazil, New Zealand, and Argentina. The intended goal of the ICCA HPV Initiative was to complete screening-level hazard assessments on 1,000 ''high priority'' chemicals. Most of the chemicals on the ICCA working list (Ref. 7) are also U.S. HPV chemicals. The ICCA testing/assessment work is tied directly to that under the OECD HPV SIDS Program.

Any U.S. HPV chemicals that are handled under the OECD HPV SIDS Program or the ICCA HPV Initiative are considered by EPA to be ''sponsored'' and are not anticipated to be addressed in the voluntary HPV Challenge Program unless the international commitments are not met. Nor does EPA intend to evaluate these chemicals for possible TSCA section 4 HPV SIDS rulemaking unless the international commitments are not met.

The OECD HPV SIDS Program and the ICCA HPV Initiative are further described in the **Federal Register** document announcing the voluntary HPV Challenge Program (Ref. 1) and on the OECD website (Ref. 6) and ICCA website (Ref. 7).

3. *TSCA rulemaking*. U.S. data needs which remain unmet in the voluntary HPV Challenge Program or through international efforts may be addressed through TSCA section 4 rulemakings, such as the final test rule promulgated by EPA on March 16, 2006 (Ref. 3). This proposed rule is the second TSCA section 4 HPV SIDS rule, and addresses the unmet data needs of 19 chemicals.

Data collected and/or developed under a final rule based on this proposal and the voluntary HPV Challenge Program, when combined with information about exposure and uses, will allow the Agency and others to better assess the potential risk to health and the environment from these chemicals. EPA intends to make the information collected under the final rule available to the public, other Federal agencies, and any other interested parties on its website (*http://www.epa.gov/chemrtk*) and in the public docket for the final rule. As appropriate, this information will be used to ensure a scientifically sound basis for risk assessment/management actions. This effort will serve to further the Agency's goal of identifying and controlling human and environmental risks as well as providing greater protection and knowledge to the public. By using the same approach to testing as that of the OECD HPV SIDS Program, EPA is assuring that the data developed under this proposed rulemaking activity and the voluntary HPV Challenge Program will be comparable to the data being developed in other countries, thereby enabling an international sharing of data and the prevention of unnecessary and duplicative testing. See Refs.1 and 2, pp. 81662–81664, for further information about the voluntary HPV Challenge Program and international efforts.

D. Why is this Proposal Focusing on HPV Chemicals and SIDS Testing?

This proposal pertains to HPV chemicals, which are manufactured or imported in amounts equal to or greater than 1 million lbs. per year. Although those chemicals cover only about 11% of the chemical substances on the TSCA Inventory (see TSCA sections 8(a) and 8(b)), using TSCA Inventory information available in 1988 (Ref. 8, p. 32296), that small percentage of the TSCA Inventory accounted for 95% of total chemical production in the United States.

Testing under this proposal pertains to SIDS testing because SIDS is a battery of tests agreed upon by the international community through OECD, of which the United States is a member country, as appropriate for screening HPV chemical substances for toxicity and produces information relevant to understanding the basic health and environmental hazards and fate of HPV chemicals. The content of SIDS was agreed upon at the 13th Joint Meeting of the OECD Chemicals Group and Management Committee of the Special Programme on the Control of Chemicals (Refs. 9 and 10). The United States believes these are the right tests for basic screening of U.S. HPV chemicals for health and environmental effects and environmental fate.

- SIDS testing evaluates the following six testing endpoints (Ref. 6):
- Acute toxicity.
- Repeat dose toxicity.
- Developmental and reproductive toxicity.
- Genetic toxicity (gene mutations and chromosomal aberrations).
- Ecotoxicity (studies in fish, Daphnia, and algae).
- Environmental fate (including physical/chemical properties (melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility), photolysis, hydrolysis, transport/distribution, and biodegradation).

While data on the six SIDS endpoints do not fully characterize a chemical's toxicity and fate, they provide a consistent minimum set of information that can be used to help assess the relative risks of chemicals and whether additional testing or assessment is necessary.

E. How Does EPA's HPV Work Relate to that of OECD?

As noted in Unit II.C.2., the OECD HPV SIDS Program is complementary to the voluntary HPV Challenge Program. However, EPA's definition of an HPV chemical differs from that of the OECD. EPA defines an HPV chemical as having an annual production or importation volume of 1 million lbs. or more. OECD defines an HPV chemical as having an annual production volume of 2.2 million lbs. (equivalent to 1 million kilograms (kg)) reported in any member country.

The presence of a chemical on the OECD's list of HPV chemicals was and

continues to be accepted by OECD member countries as providing a sufficient indicator of potential exposure to warrant testing at the SIDS level (Ref. 11). EPA, however, does not believe that a production volume threshold which is chosen for an international program on existing chemicals and which is the only trigger for entry into that program should be determinative of the threshold chosen for ''substantial production'' under TSCA section 4(a)(1)(B)(i). See EPA's ''B'' policy (Ref. 4). Among the reasons is that the TSCA section 4(a)(1)(B)(i) finding of substantial production is not the sole finding EPA must make to require testing based on TSCA section 4(a)(1)(B). EPA must also find that there is substantial release, or substantial or significant human exposure under TSCA sections 4(a)(1)(B)(i)(I) and (II). In addition, EPA must find that data are insufficient and testing is necessary under TSCA sections 4(a)(1)(B)(ii) and (iii). Accordingly, a finding that a chemical is produced in substantial quantities alone is not a sufficient basis to require testing under TSCA section 4.

In response to EPA's proposed ''B'' policy (Ref. 8), both the American Chemistry Council (ACC), formerly the Chemical Manufacturers Association (CMA) and the Society of the Plastics Industry, Inc., commented that EPA's proposed annual production-volume threshold of 1 million lbs. is a reasonable interpretation of ''substantial production'' under TSCA (Refs. 12 and 13). Additionally, they indicated that the OECD's 2.2 million lb. threshold would be preferable to achieve consistency between EPA's activities under TSCA section 4 and the OECD HPV SIDS Program. Although the United States and OECD differ in their definition of an HPV chemical and what should trigger basic screening tests of an HPV chemical, both the U.S. and OECD HPV SIDS Programs are alike in their information needs for an HPV chemical. Both the U.S. and OECD HPV SIDS Programs have identified the SIDS battery of tests as the basic screening tests needed to provide enough information to support a screening level assessment of the health and environmental effects of a chemical.

F. Why is EPA Pursuing Hazard Information on HPV Chemicals?

In 1998 EPA found that, of those non-polymeric organic substances produced or imported in amounts equal to or greater than 1 million lbs. per year based on 1990 IUR reporting, only 7% had a full set of publicly available and internationally recognized basic screening test data for health and environmental effects (Ref. 14). Of the over 2,800 U.S. HPV chemicals based on 1990 IUR data, 43% had no publicly available basic hazard data. For the remaining chemicals, limited amounts of the data were available. This lack of available hazard data compromises EPA's and others' ability to determine whether these HPV chemicals pose potential risks to human health or the environment, as well as the public's ability to know about the hazards of chemicals that may be found in their environment, their homes, their workplaces, and the products they buy.

G. What is the Role of this Proposed Rule and Any Future TSCA Section 4 HPV SIDS Rulemaking with Regard to the Voluntary HPV Challenge Program?

As indicated in the December 26, 2000 **Federal Register** document describing the voluntary HPV Challenge Program (Ref. 1), EPA intends to use rulemaking under TSCA, where appropriate, to help fill data gaps not addressed as part of the voluntary HPV Challenge Program or international efforts. EPA does not intend at this time to evaluate U.S. HPV chemicals that have been or are being handled through the OECD HPV SIDS Program or under a complementary program being coordinated by the ICCA (Ref. 7) for screening level testing under TSCA section 4 HPV SIDS rulemaking, although the Agency may revisit this question if commitments under those international programs are not met. See Unit III.G. of Ref. 1 for more information on these programs. EPA is evaluating the extent to which additional non-sponsored HPV chemicals meet the threshold criteria for rulemaking under TSCA section 4.

H. How Would the Data Developed Under this Test Rule Be Used?

Hazard data are used in risk assessment and risk management, and ultimately to inform the public and promote the pollution prevention ethic. Activities to ensure the availability of basic hazard information on HPV chemicals support EPA's objectives.

EPA would use the data obtained from this proposed rule to support development of preliminary hazard and risk assessments for the 19 chemical substances subject to the rule. The data would also be used by EPA to set priorities for further testing that may produce hazard information on these chemical substances that may be needed by EPA, other Federal agencies, the public, industry, and others, to support adequate risk assessments. As appropriate, this information would be used to ensure a scientifically sound basis for risk characterizations and risk management actions. As such, this effort would serve to further the Agency's goal of identifying and controlling human and environmental risks as well as providing greater knowledge and protection to the public. In the past, EPA has used data from test rules to support such activities as the development of water quality criteria, Toxic Release Inventory (TRI) listings, chemical advisories, and reduction of workplace exposures.

Under the Security and Prosperity Partnership of North America (SPP), a trilateral effort to encourage greater cooperation and information sharing among the United States, Canada, and Mexico (*http://www.spp.gov*), the United States committed in August 2007 to assess and initiate needed action by the end of 2012 on the approximately 6,750 chemicals produced above 25,000 lbs. per year in the United States. (*http://www.spp.gov/pdf/spp_reg_coop_chemicals.pdf*). To fulfill these SPP commitments, EPA established the Chemical Assessment and Management Program (ChAMP). Under ChAMP, EPA is developing screening-level documents that summarize basic hazard and exposure information on HPV chemicals, identify potential risks, note scientific issues and uncertainties, and indicate the initial priority being assigned by the Agency for potential future appropriate action. These screening-level documents are based primarily on hazard, use, and exposure data available to the Agency through the voluntary HPV Challenge Program and on EPA's examination of chemical use and exposure information collected from the 2006 IUR as well as data from readily available sources of hazard and exposure information. Information on ChAMP and the risk-based prioritization process for HPV chemicals is available on the EPA's ChAMP website (*http://www.epa.gov/champ*) and on the related risk-based prioritization page (*http://www.epa.gov/hpv/hpvis/aboutrbd.htm*).

The data obtained from a final test rule based on this proposal would furnish the basic hazard information integral to this ChAMP process for the 19 chemical substances subject to the rule.

Finally, because the SIDS data would be comparable to the type of data agreed to as being appropriate and being developed by the OECD HPV SIDS Program, the development of these data would enable an international sharing of data. As conceived by the OECD, the SIDS battery of tests can be used by governments and others worldwide to conduct an initial assessment of the

hazards and risks posed by HPV chemicals and prioritize HPV chemicals to identify those in need of additional, more in-depth testing and assessment, as well as those of lesser concern. Not only could the data contribute to the international effort, but also international SIDS testing and assessments can be used to fill the data gaps identified as part of the voluntary HPV Challenge Program. Additional detailed information is available on the SIDS website (*http://cs3-hq.oecd.org/scripts/hpv*) and EPA's voluntary HPV Challenge Program website (*http://www.epa.gov/chemrtk*).

Data collected or developed for each sponsored chemical in the voluntary HPV Challenge Program are provided in the format of a ''robust'' (i.e., detailed) summary. A robust summary contains the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report, which can either be an experiment or in some cases an estimation or prediction method. (See Ref. 15; also at *http://www.epa.gov/HPV/pubs/general/robsumgd.htm*). A robust summary provides information that would assist a technically qualified person in making an independent assessment of a given study, and thereby facilitates the evaluation of existing data and the identification of additional data needs. EPA requests that existing data relevant to the testing in this proposed rule be submitted to the Agency in robust summary format. For any data developed under that final rule, EPA will request that a robust summary of the final report for each specific test be submitted in addition to the required final report itself (see § 799.5087(i) of the proposed regulatory text). Persons who respond to this request to submit robust summaries are also encouraged to submit the robust summary electronically via the High Production Volume Information System (HPVIS) to allow for its ready incorporation into HPVIS. Directions for electronic submission of robust summary information into HPVIS are provided at *https://iaspub.epa.gov/oppthpv/metadata.html*. This link will direct you to the ''HPVIS Quick Start and User's Guide.''

I. How are Animal Welfare Issues Being Considered in the HPV Initiative?

EPA recognizes the concerns that have been expressed about the use of test procedures that require the use of animals. As discussed in Unit II.E. of Ref. 1, EPA is making every effort to ensure that as the HPV Initiative is implemented (including TSCA section 4 HPV SIDS test rules), unnecessary or duplicative testing is avoided and the use of animals is minimized. As a general matter, EPA does not require that tests on animals be conducted if an alternative scientifically validated method is found acceptable and practically available for use. Where testing must be conducted to develop adequate data, the Agency is committed to reducing the number of animals used for testing, to replacing test methods requiring animals with alternative test methods when acceptable alternative methods are available, and to refining existing test methods to optimize animal use when there is no substitute for animal testing. EPA believes that these reduction, replacement, and refinement objectives are all important elements in the overall consideration of alternative testing methods.

The governmental and non-governmental scientific community is working to design, validate, and employ new methods of toxicity testing that are more accurate, less costly, and that reduce the need to use live animals. Over the years, significant research has been pursued to develop and validate non-animal test methods. U.S. scientists in academia, government, and industry have participated in both domestic and international efforts to develop alternative, non-animal tests. As part of the enterprise, the National Institute of Environmental Health Sciences (NIEHS) established a Federal Interagency Committee, the Interagency Coordinating Committee on Validation of Alternative Methods (ICCVAM), to review the status and validation of toxicological test methods including those that are performed *in vitro*. EPA scientists have contributed significantly to this body of knowledge and are continuing to play an important role in the development of alternative test methods for consideration.

In addition, as part of the voluntary HPV Challenge Program, EPA asked participants in that program to observe certain testing principles, which are laid out in an October 14, 1999 letter (Ref. 16). In this same letter, the Agency also indicated its intention that related TSCA rulemaking proceed in a manner consistent with these principles. This letter is available in the public docket for this proposed rulemaking, as well as on EPA's ChemRTK website. In the letter, EPA requested that participants conduct a thoughtful, qualitative analysis of existing data before testing. This proposed rule reflects many of the principles presented in the referenced voluntary HPV Challenge Program letter. Certain components of these principles, however, are not pertinent to this proposed rule. For example, this proposed rule does not require any dermal toxicity testing or any terrestrial toxicity testing.

III. EPA Proposed Findings

A. What is the Basis for EPA's Proposal to Test These Chemical Substances?

As indicated in Unit II.B., in order to develop a rulemaking under TSCA section 4(a) requiring the testing of chemical substances or mixtures, EPA must, among other things, make certain findings regarding either risk (TSCA section 4(a)(1)(A)(i)) or production combined with either chemical release or human exposure (TSCA section 4(a)(1)(B)(i)), with regard to those chemicals. EPA is proposing to require testing of the chemical substances included in this proposed test rule based on its preliminary findings under TSCA section 4(a)(1)(B)(i) relating to ''substantial'' production and ''substantial human exposure,'' as well as findings under TSCA sections 4(a)(1)(B)(ii) and (iii) relating to sufficient data and the need for testing. The chemical substances included in this proposed rule are listed in Table 2 in § 799.5087(j) of the proposed regulatory text along with their Chemical Abstract Service (CAS) registry numbers.

In EPA's ''B'' policy (see Unit II.E.), ''substantial production'' of a chemical substance or mixture is generally considered to be aggregate production (including import) volume equaling or exceeding 1 million lbs. per year of that chemical substance or mixture (Ref. 4, p. 28747). The ''B'' policy also provides guidelines that are generally considered by EPA in evaluating whether there is ''substantial human exposure'' of workers, consumers, and the general population to a chemical substance or mixture. Refer to EPA's ''B'' policy for further discussion on how EPA generally evaluates chemicals or mixtures under TSCA section 4(a)(1)(B)(i). For the reasons set out in the ''B'' policy, EPA believes that the guidance included in the ''B'' policy is appropriate for consideration in this proposed rule and EPA sees no reason not to act consistently with the guidelines with respect to the chemicals included in this proposed rule.

EPA has found preliminarily that, under TSCA section 4(a)(1)(B)(i), each of the 19 chemical substances included in this proposed rule is produced in ''substantial'' quantities (see Unit III.B.) and that there is or may be ''substantial human exposure'' to each chemical substance (see Units III.C. and III.D.). Also, for one substance, EPA has found

preliminarily that, under TSCA section 4(a)(1)(B)(i), the substance enters or may reasonably be anticipated to enter the environment in substantial quantities (see Unit III.E.). In addition, under TSCA section 4(a)(1)(B)(ii), EPA has preliminarily determined that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, or use of these chemical substances, or of any combination of such activities, on human health or the environment (see Unit III.F.). EPA has also found preliminarily that testing the 19 chemical substances identified in this proposed rule is necessary to develop such data (TSCA section 4(a)(1)(B)(iii)) (see Unit III.F.). EPA has not identified any ''additional factors'' as discussed in the ''B'' policy (Ref. 4, p. 28746) to cause the Agency to use decisionmaking criteria other than those described in the policy.

The chemical substances included in this proposed rule are listed in § 799.5087(j) of the proposed regulatory text along with their CAS numbers.

B. Are These Chemical Substances Produced and/or Imported in Substantial Quantities?

EPA has made preliminary findings that each of the chemical substances included in this proposal is produced and/or imported in an amount equal to or greater than 1 million lbs. per year (Ref. 18), based on information gathered pursuant to the 2006 IUR which is the most recently available compilation of TSCA Inventory data. EPA believes that these annual production and/or importation volumes are ''substantial'' as that term is used with reference to production in TSCA section 4(a)(1)(B)(i). (See also Ref. 4, p. 28746). A discussion of EPA's preliminary ''substantial production'' finding for each chemical substance included in this proposed rule is contained in a separate document (See Ref. 18).

C. Are a Substantial Number of Workers Exposed to These Chemicals?

EPA has made preliminary findings that the manufacture, processing, and use of the 19 chemical substances (Table 1.–Exposure Based Findings–Substantial Human Exposure, Unit III.D.) included in this action result or may result in exposure of a substantial number of workers to the chemical substances.

This finding is based, in large part, on information submitted in accordance with the 2006 IUR. For chemicals whose total production volume (manufactured and imported) exceeded 300,000 lbs. at a site during calendar year 2005, manufacturers and importers were required to report the number of potentially exposed workers during industrial processing and use to the extent the information was readily obtainable. In addition, the submitters are required to provide information regarding the commercial and consumer uses of the chemical substance.

EPA believes that an exposure of over 1,000 workers to a chemical substance is ''substantial'' as that term is used with reference to ''human exposure'' in TSCA section 4(a)(1)(B)(i). EPA believes, based on experience gained through case-by-case analysis of existing chemicals, that an exposure of 1,000 workers or more to a chemical substance is a reasonable interpretation of the phrase ''substantial human exposure'' in TSCA section 4(a)(1)(B)(i); see Ref. 4). Therefore, EPA's preliminary finding is that there is or may be substantial human exposure (workers) to these 19 chemical substances.

In addition to the 2006 IUR data, EPA also reviewed National Occupational Exposure Survey (NOES) data developed by the National Institute for Occupational Safety and Health (NIOSH). Based on the NOES data, EPA found that more than 1,000 workers were exposed to each of the 19 chemical substances that are the subject of this proposed rule. The NOES was a nationwide data gathering project conducted by NIOSH, which was designed to develop national estimates for the number of workers potentially exposed to various chemical, physical and biological agents and describe the distribution of these potential exposures. Begun in 1980 and completed in 1983, the survey involved a walk-through investigation by trained surveyors of 4,490 facilities in 523 different types of industries. Surveyors recorded potential exposures when a chemical agent was likely to enter or contact the worker's body for a minimum duration. These potential exposures could be observed or inferred. Information from these representative facilities was extrapolated to generate national estimates of potentially exposed workers for more than 10,000 different chemicals (Refs. 20, 57, and 58). EPA also compared production volumes from the 1986 IUR data collection to the production volumes for the 2006 IUR data collection. Of the 19 chemical substances in this proposed rule, only one chemical's production volume decreased from 1986 to 2006. The 2006 IUR production volume data are consistent with NOES results, as the production volumes for the remaining chemical substances either stayed the same or increased since 1986, thereby indicating that the usage of these chemical substances is no less than when NOES data were gathered.

EPA has performed a chemical-by-chemical analysis for all 19 chemical substances and carefully considered the industrial process and use information along with the commercial and consumer use information from the 2006 IUR submissions. Commercial uses are defined as ''The use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (e.g., dry cleaning establishment, painting contractor)''; 40 CFR 710.43. Detailed information from the IUR submissions can be found in ''Testing of Certain High Production Volume Chemicals; Second Group of Chemicals (Exposure Findings Supporting Information)'' (Ref. 18). Based on the nature of the IUR uses, EPA considers that chemicals with reported commercial uses may result in potential exposure to 1,000 workers or more. The total number of workers reported under the IUR is the sum of information on both industrial workers plus commercial use workers.

In 2003, EPA partially exempted certain petroleum process streams (including ''Hydrocarbons, C>4'' (CAS No. 68647–60–9) and ''Oils, reclaimed'' (CAS No. 69029–75–0)) from reporting certain processing and use data under the TSCA section 8(a) IUR. The exemption was not based on an assessment of the toxicity of the process streams but on the fact that the chemicals are frequently processed, transported, and stored in vessels that minimize the potential for releases and exposure to workers. (**Federal Register** issue of January 7, 2003 (68 FR 848) (FRL–6767–4) and **Federal Register** issue of December 19, 2005 (71 FR 75059) (FRL–7743–9); available on-line at: *http://www.epa.gov/fedrgstr*). Despite the fact that the degree of exposure is expected to be diminished to particular workers because of the chemical processing and handling practices used, available data indicate that more than 1,000 workers are potentially exposed to these chemicals, supporting the preliminary finding of substantial human exposure (Ref. 18).

D. Are a Substantial Number of Consumers Exposed to These Chemicals?

Based on 2006 IUR data, EPA has made preliminary findings that the uses of 13 of the chemical substances included in this action result or may result in exposure to a substantial number of consumers (Ref. 18). EPA reviewed the consumer use information reported for the 2006 IUR and carefully

considered the nature of those uses. Upon completion of the review, EPA concluded that the reported consumer uses for the chemicals in this action may result in at least 10,000 potentially exposed consumers, thus meeting the exposure based finding for consumers.

In addition to findings made based on the 2006 IUR data, EPA has also made consumer exposure based findings based on the National Library of Medicine (NLM) Household Products Database (Ref. 18). The chemical substances reported in the National Library of Medicine (NLM) Household Products Database are present in multiple household products subject to TSCA including hobby/craft products, personal care products, home cleaning products, home maintenance products, and automotive products. The NLM Household Products Database provides information on the chemical ingredients and their percentage in specific brands of household products. Information in the database is from a variety of publicly available sources including brand-specific labels and Material Safety Data Sheets when available from manufacturers and manufacturers' websites. Publicly available information from the database is available on-line at: *http://householdproducts.nlm.nih.gov*.

EPA believes that use of the consumer products identified in the NLM Household Products Database may expose a substantial number of consumers (i.e., greater than 10,000) to these chemical substances. EPA believes that an exposure of over 10,000 consumers to a chemical substance is ''substantial'' as that term is used with reference to ''human exposure'' in TSCA section 4(a)(1)(B)(i). EPA believes, based on experience gained through case-by-case analysis of existing chemicals, that an exposure of 10,000 consumers or more to a chemical substance is a reasonable interpretation of the phrase ''substantial human exposure'' in TSCA section 4(a)(1)(B)(i). (See Ref. 4.) Therefore, EPA's preliminary finding is that there is or may be substantial human exposure (consumers) to these chemical substances.

A discussion of EPA's preliminary ''substantial exposure'' finding for consumers is contained in a separate document (see Ref. 18). The Agency solicits comment regarding additional information pertaining to numbers of consumers potentially exposed to the chemical substances identified in this proposed rule.

TABLE 1.—EXPOSURE BASED FINDINGS—SUBSTANTIAL HUMAN EXPOSURE

CAS No.	2006 IUR Production Volume	Meet Exposure Based CriteriaFor Mfg & Industrial Workers	NOES (number of workers)	Meet Exposure Based Criteria for Commercial Workers	Meet Exposure Based Criteria for Consumers	Meet Substantial or Significant Release Criteria	NLM Household Chemicals Database
75–07–0	> 100 million (M)–500 M	X	216,533		X	X	X
78–11–5	> 1 M–10 M	X	2,650		X		
84–65–1	> 10 M–50 M	X	6,187	X	X		
89–32–7	> 1 M–10 M	X	1,926				
110–44–1	> 1 M–10 M	X	69,243	X	X		X
118–82–1	> 1 M–10 M	X	120,009	X	X		
119–61–9	> 1 M–10 M	X	41,516	X	X		X
144–62–7	> 1 M–10 M	X	142,000	X	X	X	X
149–44–0	> 1 M–10 M	X	239,465	X	X		
2524–04–1	> 10 M–50 M	X	1,088				
4719–04–4	> 10 M–50 M	X	225,251	X	X	X	X
6381–77–7	> 1 M–10 M	X	19,468				
31138–65–5	> 1 M–10 M	X	74,165	X	X		
66241–11–0	> 1 M–10 M	X	38,555	X	X		
68187–76–8	> 1 M–10 M	X	11,164	X	X		
68187–84–8	> 1 M–10 M	X	36,381	X	X		X
68479–98–1	> 10 M–50 M	X	4,121				
68527–02–6	> 1 M–10 M	X	84,192				
68647–60–9	> 1 Billion lbs.	X	1,257				

E. Are Substantial Quantities of These Chemicals Released to the Environment?

EPA does not have readily available data on environmental releases for most of the 19 chemical substances in this proposed rule. However, one substance, acetaldehyde (CAS No. 75–07–0) is included in TRI and has estimated environmental release in 2005 of 13,567,452 lbs. (Ref. 18). TRI contains information about releases of certain chemicals and management of wastes at a wide variety of sources, including manufacturing operations, certain service businesses, and Federal facilities. Publicly available information from the 2005 TRI reporting cycle is available on-line at: *http://www.epa.gov/triexplorer*. Two additional chemicals (ethanedioic acid and 1,3,5-triazine-1,3,5(2H,4H,6H)-triethanol) also meet the substantial release criteria based on the environmental releases from their reported IUR uses.

EPA believes that an environmental release of a chemical substance in an amount equal to or greater than 1 million lbs. per year or greater than 10% of the reported production volume is ''substantial'' as that term is used with reference to ''enter the environment in substantial quantities'' in TSCA section 4(a)(1)(B)(i). (See Ref. 4).

The Agency solicits comment regarding additional information pertaining to the amount of environmental release of the chemical substances identified in this proposed rule.

F. Do Sufficient Data Exist for These Chemical Substances?

In developing the testing requirements for chemicals contained in this proposed rule, available information on chemical/physical properties, environmental fate, ecotoxicity, and human health effects was searched using the data sources outlined in the OECD guidelines found in section 3.1 (Reliability, Relevance and Adequacy) of the ''Manual for the Investigation of HPV Chemicals'' (Ref. 6) such as: Beilstein Database, CRC Handbook of Chemistry and Physics, Hawley's Condensed Chemical Dictionary, Illustrated Handbooks of Physical-Chemical Properties and Environmental Fate for Organic Chemicals, Merck Index, Hazardous Substances Data Bank (HSDB), Toxicology Literature Online (TOXLINE), and the National Technical Information Service (NTIS). EPA also searched for available data as summarized in its HPV Information System (Ref. 56). For one HPV chemical, data available from an EPA reassessment of its use as an inert in pesticides formulations were examined (Ref. 21). When appropriate, the Federal Research In Progress (FEDRIP) database was also searched. Any information that was obtained from these searches was evaluated for data acceptability using the guidelines described on EPA's voluntary HPV Challenge Program website (*http://www.epa.gov/chemrtk/pubs/general/guidocs.htm*): ''Guidance for Meeting the SIDS Requirements (The SIDS Guide)'' and ''Guidance for Assessing the Adequacy of Existing Data.'' Furthermore, data adequacy and reliability were evaluated using the OECD guidelines which can be found in section 3.1 of the OECD ''Manual for the Investigation of HPV Chemicals'' (Ref. 6).

It is worth noting that additional testing is being proposed for five chemicals that had been included in the final TSCA section 4 HPV SIDS rulemaking issued on March 16, 2006 (Ref. 3). EPA noted in the proposed (Ref. 2) and final rule (Ref. 3) for that first HPV SIDS rulemaking that, for chemicals for which some data were available on one or more SIDS endpoints, EPA was not requiring testing at that time for those endpoints. However, EPA stated at that time that no definitive determination had been made as to the adequacy of those existing data for an initial assessment of a chemical's hazards or risks to health or the environment. Consequently, in that final rule, EPA stated that if EPA determines that it needs additional data regarding any of the chemical substances included in the final rule, the Agency might seek further health and/or environmental effects testing for those chemical substances. EPA has now completed its assessment of the adequacy of the available data for those endpoints that were not included for these chemicals in the first HPV SIDS rulemaking. In some instances, EPA has made a preliminary finding that, for some of the SIDS endpoints, the existing data and experience are not sufficient to enable the effects of these substances on health or the environment to reasonably be determined or predicted. Therefore, EPA has also proposed testing for those endpoints in this proposed rule.

Section 799.5087(j) of the proposed regulatory text lists each chemical and the SIDS tests for which adequate data are not currently available to the Agency. The Agency preliminarily finds that the existing data for one or more of the SIDS testing endpoints for each of the chemical substances listed in Table 2 of the proposed regulatory text (including environmental fate (comprising five tests for physical/chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility] and biodegradation); ecotoxicity (tests in fish, Daphnia, and algae); acute toxicity; genetic toxicity (gene mutations and chromosomal aberrations); repeat dose toxicity; and developmental and reproductive toxicity) are insufficient to enable EPA to reasonably determine or predict the human health and environmental effects resulting from manufacture, processing, and use of these chemical substances.

EPA solicits comment concerning the availability of existing studies on the SIDS endpoints proposed in this document on these chemical substances. To the extent that additional studies relevant to the testing proposed in this rulemaking are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule, including full citations for publications and full copies of unpublished studies. If EPA judges such data to be sufficient, corresponding testing will not be included in the final rule. Commenters are also encouraged to prepare a robust summary (Ref. 15) for each such study to facilitate EPA's review of the full study report or publication. Persons who respond to this request to submit robust summaries are also encouraged to submit the robust summary electronically via the High Production Volume Information System (HPVIS) to allow for its ready incorporation into HPVIS. Directions for electronic submission of robust summary information into HPVIS are provided at *https://iaspub.epa.gov/oppthpv/metadata.html*. This link will direct you to the ''HPVIS Quick Start and User's Guide.''

As noted in Unit II.C.1., persons who believe that adequate information regarding a chemical subject to this proposed rule can be developed using a category or SAR approach are encouraged to submit appropriate information, along with their rationale which substantiates this belief, during the comment period on this proposed rule. If, based on submitted information and other information available to EPA, the Agency agrees; EPA will take such measures as are needed to avoid unnecessary testing in the final rule.

G. Is Testing Necessary for These Chemical Substances?

EPA would use the data obtained from this proposed testing to support development of preliminary hazard and risk characterizations for these HPV chemicals as part of the ChAMP process

fulfilling the U.S. commitments under the SPP to set initial priorities for potential future appropriate action, including possible further testing that would produce more definitive hazard information where needed on such chemical substances. Such additional information is needed by EPA, other Federal agencies, the public, industry, and others to ensure that adequate hazard and risk assessments can be conducted on these chemical substances. EPA has used data from test rules to support such activities as the development of water quality criteria, TRI listings, chemical advisories, and input for actions resulting in reduction of workplace exposures.

EPA preliminarily believes that conducting the needed SIDS testing identified for the 19 subject chemical substances is necessary to provide data relevant to a determination of whether the manufacture, processing, and use of the chemical substances does or does not present an unreasonable risk of injury to human health and the environment.

IV. Proposed Testing

A. What Testing is Being Proposed in this Action?

EPA is proposing specific testing and reporting requirements for the chemical substances specified in § 799.5087(j) of the proposed regulatory text.

All of the proposed testing requirements are listed in Table 2 in § 799.5087(j) of the proposed regulatory text and consist of a series of test methods covering many of the endpoints in the OECD HPV SIDS testing battery. EPA, however, requires that the American Society for Testing and Materials (ASTM) or the TSCA test guidelines at 40 CFR part 799 (TSCA 799 guidelines) be used because the language in the TSCA 799 guidelines makes clear which steps are mandatory and which steps are only recommended. EPA's TSCA 799 guidelines, however, have been harmonized with the OECD guidelines. Accordingly, in order to comply with this test rule, testing must be conducted in accordance with the specified mandatory and enforceable requirements in the ASTM or TSCA 799 guidelines. Most of the proposed testing requirements for a particular endpoint are specified in one test standard. In the case of certain endpoints, however, any of multiple listed methods could be used. For several of the proposed test standards, EPA has identified and is proposing certain ''Special Conditions'' as discussed in this unit. The following endpoints and proposed test standards would be required under this proposed rule.

1. *Physical/chemical properties.*

Melting Point: American Society for Testing and Materials (ASTM) E 324–99 (Capillary tube) (Ref. 22).

Boiling Point: ASTM E 1719–05 (Ebulliometry) (Ref. 23).

Vapor Pressure: ASTM E 1782–03 (Thermal analysis) (Ref. 24).

n-Octanol/Water Partition Coefficient:

Method A (40 CFR 799.6755—shake flask)

Method B (ASTM E 1147–92(2005)—liquid chromatography) (Ref. 25).

Method C (40 CFR 799.6756—generator column).

Water Solubility:

Method A: (ASTM E 1148–02—shake flask) (Ref. 26).

Method B (40 CFR 799.6784—shake flask).

Method C (40 CFR 799.6784—column elution).

Method D (40 CFR 799.6786—generator column).

EPA is proposing, for those chemicals for which melting points determinations are needed, that melting points be determined according to the method ASTM E 324–99. Although ASTM indicates on its website, *http://www.astm.org/cgi-bin/SoftCart.exe/STORE/filtrexx40.cgi?U+mystore+lien2117+-L+E324+/usr6/htdocs/astm.org/DATABASE.CART/WITHDRAWN/E324.htm* that ASTM E 324–99 has been withdrawn, ASTM has explained that ASTM E 324–99 was withdrawn because:

> The standard utilizes old, well-developed technology; it is highly unlikely that any additional [changes] and/or modifications will ever be pursued by the E15 [committee]. The time and effort needed to maintain these documents detract from the time available to develop new standards which use modern technology.
> (Ref. 27)

Withdrawal of the method by ASTM means only that ASTM no longer continues to develop and improve the method. It does not mean that ASTM no longer considers the method to be valid. ASTM still makes the method available for informational purposes and it can still be purchased from ASTM at the address listed in § 799.5087(h) of the proposed regulatory text. EPA concludes that ASTM's withdrawal of E 324–99 does not have negative implications on the validity of the method; therefore, EPA is proposing, for those chemicals for which melting points determinations are needed, that melting points be determined according to the method ASTM E 324–99.

For the *n*-octanol/water partition coefficient and water solubility endpoints, EPA is proposing that certain ''Special Conditions'' be considered by test sponsors in determining the appropriate test method that would be used from among those included for these endpoints in Table 3 in § 799.5087(j) of the proposed regulatory text.

For the ''*n*-Octanol/Water Partition Coefficient (log 10 basis)'' endpoint, also known as log K_{ow}, EPA proposes that an appropriate selection be made from among three alternative methods for measuring the substance's *n*-octanol/water partition coefficient. Prior to determining the appropriate standard to use, if any, to measure the *n*-octanol/water partition coefficient, EPA is recommending that the log K_{ow} be quantitatively estimated. EPA recommends that the method described in ''Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients'' (Ref. 28) be used in making such estimation. EPA is proposing that test sponsors must submit with the final study report the underlying rationale for the test standard selected for this endpoint. EPA is proposing this approach in recognition of the fact that depending on the chemical substance's log K_{ow}, one or more test methods may provide adequate information for determining the log K_{ow}, but that in some instances one particular test method may be more appropriate In general, EPA believes that the more hydrophobic a subject chemical is, the less well Method A (§ 799.6755—shake flask) will work and Method B (ASTM E 1147–92(2005)) and Method C (§ 799.6756—generator column) become more suitable, especially Method C. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA proposes that all required *n*-octanol/water partition coefficient tests be conducted at pH 7 to ensure environmental relevance. The proposed test standards and log K_{ow} ranges that would determine which tests must be conducted for this endpoint are shown in Table 2 of this unit.

TABLE 2.—TEST REQUIREMENTS FOR THE N-OCTANOL/WATER PARTITION COEFFICIENT ENDPOINT

Testing Category	Test Requirements and References	Special Conditions
Physical/chemical properties	*n*-Octanol/water partition coefficient (log 10 basis) or log K_{ow}: The appropriate log K_{ow} test, if any, would be selected from those listed in this column—see Special Conditions in the adjacent column. Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147–92(2005) (liquid chromatography) Method C: 40 CFR 799.6756 (generator column)	*n*-Octanol/water partition coefficient or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A or B or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7.

For the ''Water Solubility'' endpoint, EPA proposes an appropriate selection be made from among four alternative methods for measuring that endpoint. The test method used, if any, would be determined by first quantitatively estimating the test substance's water solubility. One recommended method for estimating water solubility is described in ''Improved Method for Estimating Water Solubility from Octanol/Water Partition Coefficient'' (Ref. 29). EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA proposes that all required water solubility tests be conducted starting at pH 7 to ensure environmental relevance. The estimated water solubility ranges that EPA is proposing for use in selecting an appropriate proposed test standard are shown in Table 3 of this unit.

TABLE 3.—TEST REQUIREMENTS FOR THE WATER SOLUBILITY ENDPOINT

Testing Category	Test Requirements and References	Special Conditions
Physical/chemical properties	Water solubility: The appropriate method to use, if any, to test for water solubility would be selected from those listed in this column—see Special Conditions in the adjacent column. Method A: ASTM E 1148–02 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	Water solubility: Which method is required, if any, would be determined by the test substance's estimated water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 milligram/Liter (mg/L): Method A or B. > 10 mg/L—5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L—10 mg/L: Method C or D. ≤ 0.001 mg/L: No testing required.

2. *Environmental fate and pathways.*

Ready Biodegradation:

Method A: ASTM E1720–01 (Sealed vessel CO_2 production test) (Ref. 30).

Method B: ISO 14593 (CO_2 headspace test) (Ref. 31).

Method C: ISO 7827 (Method by analysis of dissolved organic carbon (DOC)) (Ref. 32).

Method D: ISO 9408 (Determination of oxygen demand in a closed respirometer) (Ref. 33).

Method E: ISO 9439 (Carbon dioxide evolution test) (Ref. 34).

Method F: ISO 10707 (Closed bottle test) (Ref 35).

Method G: ISO 10708 (Two-phase closed bottle test) (Ref. 36).

For the ''Ready Biodegradation'' endpoint, EPA proposes an appropriate selection be made from among seven alternative methods for measuring the substance's ready biodegradability. For most test substances, EPA considers Method A (ASTM E1720–01) and Method B (ISO 14593) to be generally applicable, cost effective, and widely accepted internationally. However, the test method used, if any, will depend on the physical and chemical properties of the test substance, including its water solubility. An additional document, ISO 10634 (Ref. 37), provides guidance for selection of an appropriate test method for a given test substance considering the substances physical and chemical properties. EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint.

3. *Aquatic toxicity.*

Test Group 1:

Acute toxicity to fish (ASTM E 729–96(2002)) (Ref. 38).

Acute toxicity to Daphnia (ASTM E 729–96(2002)) (Ref. 38).

Toxicity to plants (algae) (ASTM E 1218–04e1) (Ref. 39).

Test Group 2:

Chronic toxicity to Daphnia (ASTM E 1193–97(2004)) (Ref. 40).

Toxicity to plants (algae) (ASTM E 1218–04e1) (Ref. 39).

For the ''Aquatic Toxicity'' endpoint, the OECD HPV SIDS Program recognizes that, for certain chemicals, acute toxicity studies are of limited value in assessing the substances' aquatic toxicity. This issue arises when considering chemical substances with high log K_{ow} values. In such cases, toxicity is unlikely to be observed over the duration of acute toxicity studies because of reduced uptake and the extended amount of time required for such substances to reach steady state or toxic concentrations in the test organism. For such situations, the OECD HPV SIDS Program recommends use of chronic toxicity testing in Daphnia in place of acute toxicity testing in fish and Daphnia. EPA is proposing that the aquatic toxicity testing requirement be

determined based on the test substance's measured log K_{ow} as determined by using the approach outlined in Unit IV.A.1., in the discussion of ''*n*-Octanol/Water Coefficient,'' and in Table 3 in § 799.5087(j) of the proposed regulatory text. For test substances determined to have a log K_{ow} of less than 4.2, one or more of the following tests (described as ''Test Group 1'' in Table 3 in § 799.5087(j) of the proposed regulatory text) are proposed: Acute toxicity to fish (ASTM E 729–96 (2002)); Acute toxicity to Daphnia (ASTM E 729–96(2002)); and Toxicity to plants (algae) (ASTM E 1218–04e1). For test substances determined to have a log K_{ow} that is greater than or equal to 4.2, one or both of the following tests (described as ''Test Group 2'' in Table 3 in § 799.5087(j) of the proposed regulatory text) are proposed: Chronic toxicity to Daphnia (ASTM E 1193–97(2004)) and Toxicity to plants (algae) (ASTM E 1218–04e1). As outlined in Table 3 in § 799.5087(j) of the proposed regulatory text, depending on the testing proposed in Test Group 1, the Test Group 2 chronic Daphnia test may substitute for either or both the acute fish toxicity test and the acute Daphnia test.

Using SAR, a log K_{ow} of 4.2 corresponds with a fish bioconcentration factor (BCF) of about 1,000 (Refs. 29, 41, and 42). A chemical substance with a fish BCF value of 1,000 or more is characterized as having a tendency to accumulate in living organisms relative to the concentration of the chemical in the surrounding environment (Ref. 42). For the purposes of this proposed rulemaking, EPA's use of a log K_{ow} equal to or greater than 4.2 (which corresponds with a fish BCF value of 1,000) is consistent with the approach taken in the Agency's Final Policy Statement under TSCA section 5 entitled *Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances* (Ref. 43). EPA has also used a measured BCF that is equal to or greater than 1,000 or, in the absence of bioconcentration data, a log P [same as log K_{ow}] value equal to or greater than 4.3 to help define the potential of a new chemical substance to cause significant adverse environmental effects (Significant New Use Rules; General Provisions For New Chemical Follow-Up (Ref. 44) (See also 40 CFR 721.3.)). EPA considers the difference between the log K_{ow} of 4.3 cited in the 1989 **Federal Register** document and the log K_{ow} value of 4.2 cited in this proposed rule to be negligible.

EPA recognizes that in some circumstances, acute aquatic toxicity testing (Test Group 1) may be relevant for certain chemical substances having a log K_{ow} equal to or greater than 4.2. chemical substances that are dispersible in water (e.g., surfactants, detergents, aliphatic amines, and cationic dyes) may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. For any chemical substance listed in Table 3 in § 799.5087(j) of the proposed regulatory text for which a test sponsor believes that an alternative to the log K_{ow} threshold of 4.2 is appropriate, the test sponsor may request a modification of the test standard in the final rule as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method to be used for determining whether acute or chronic aquatic toxicity testing must be performed for a specific substance. EPA is soliciting public comment on this approach as well as other alternative approaches in this area.

4. *Mammalian toxicity—acute*.

Acute Inhalation Toxicity (rat): Method A (40 CFR 799.9130).

Acute Oral Toxicity (rat): Method B (ASTM E 1163–98(2002) (Ref. 59) or 40 CFR 799.9110(d)(1)(i)(A)).

For the ''Mammalian Toxicity—Acute'' endpoint, EPA is proposing that certain ''Special Conditions'' in the form of the chemical substance's physical/chemical properties or physical state be considered in determining the appropriate test method that would be used from among those included for this endpoint in Table 3 in § 799.5087(j) of the proposed regulatory text. The OECD HPV SIDS Program recognizes that, for most chemical substances, the oral route of administration will suffice for this endpoint. However, consistent with the approach taken under the voluntary HPV Challenge Program, EPA is proposing that, for test substances that are gases at room temperature (25° C), the acute mammalian toxicity study be conducted using inhalation as the exposure route (described as Method A (40 CFR 799.9130) in Table 3 in § 799.5087(j) of the proposed regulatory text). In the case of a potentially explosive test substance, care must be taken to avoid the generation of explosive concentrations. For all other chemicals (i.e., those that are either liquids or solids at room temperature), EPA is proposing that the acute toxicity testing be conducted via oral administration using an ''Up/Down'' test method (described as Method B (ASTM E 1163–98(2002) or 40 CFR 799.9110(d)(1)(i)(A)) in Table 3 in § 799.5087(j) of the proposed regulatory text). Consistent with the voluntary HPV Challenge Program, EPA is proposing to allow the use of the Neutral Red Uptake (NRU) basal cytotoxicity assay to select the starting dose for the acute oral toxicity test. This test is included as a special condition in Table 3 of the proposed regulatory text. A document developed by NIH/NIEHS provides guidance on how to use the NRU assay to estimate a starting dose for an acute oral toxicity test (Ref. 50). Recent versions of the standardized protocols for the NRU assay are available at the NIEHS/ICCVAM website, *http://iccvam.niehs.nih.gov/methods/acutetox/invitrocyto/invcyt_proto.htm* (Refs. 51–53).

Dermal toxicity testing is not proposed in this rulemaking, and the Agency does not intend to include any dermal toxicity testing in any TSCA section 4 HPV SIDS rulemakings.

5. *Mammalian toxicity—genotoxicity*.

Gene mutations:

Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510.

Chromosomal damage:

In Vitro Mammalian Chromosome Aberration Test (40 CFR 799.9537), or the *In Vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9538), or the *In Vivo* Mammalian Erythrocyte Micronucleus Test (sampled in bone marrow) (rodents: mouse (preferred species), rat, or Chinese hamster) (40 CFR 799.9539).

Persons who would be required to conduct testing for chromosomal damage are encouraged to use *in vitro* genetic toxicity testing (i.e., the Mammalian Chromosome Aberration Test) to generate the needed genetic toxicity screening data, unless known chemical properties preclude its use. These could include, for example, physical chemical properties or chemical class characteristics. A primary focus of both the voluntary HPV Challenge Program and this proposed rule is to implement this program in a manner consistent with the OECD HPV SIDS Program and as part of a larger international activity with global involvement. This proposed approach provides the same degree of flexibility as that which currently exists under the OECD HPV SIDS testing program (Ref. 6). A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address this end-point would be required to submit to EPA a rationale for conducting that alternate test in the final study report.

6. *Mammalian toxicity—repeated dose/reproduction/developmental*.

Combined Repeated Dose Toxicity Study with the Reproduction/

Developmental Toxicity Screening Test: 40 CFR 799.9365.

Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355.

Repeated Dose 28–Day Oral Toxicity Study: 40 CFR 799.9305.

For the ''Mammalian Toxicity—Repeated Dose/Reproduction/Developmental'' endpoint, EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365) as the test of choice. EPA recognizes, however, that there may be reasons to test a particular chemical substance using both the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9355) and the Repeated Dose 28–Day Oral Toxicity Study (40 CFR 799.9305) instead of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). With regard to such cases, EPA is proposing that a subject person who uses the combination of the Reproduction/Developmental Toxicity Screening Test and the Repeated Dose 28–Day Oral Toxicity Study in place of the Combined Repeated Dose Toxicity Study with Reproduction/Developmental Toxicity Screen would be required to submit to EPA a rationale for conducting these alternate tests in the final study reports.

Certain of the chemical substances for which Mammalian Toxicity—Repeated Dose/Reproduction/Developmental testing is proposed may be used solely as ''closed system intermediates,'' as described in the EPA guidance document developed for the voluntary HPV Challenge Program (Ref. 46). As described in that guidance, such chemical substances may be eligible for a reduced testing battery which substitutes a developmental toxicity study for the SIDS requirement to address repeated dose (e.g., subchronic), reproductive, and developmental toxicity. In other words, since only the developmental toxicity study would be conducted for those chemical substances that qualify for a reduced testing battery, repeated dose (e.g., subchronic) and reproductive studies would not be conducted. At the present time, EPA does not have sufficient information to know with any degree of certainty which if any of the chemical substances that are listed in the proposed regulatory text are solely closed system intermediates as defined in the voluntary HPV Challenge Program guidance document (Ref. 46). Persons who believe that a chemical substance fully satisfies the terms outlined in the guidance document are encouraged to submit appropriate information along with their comments on this proposed rule which substantiate this belief. If, based on submitted information and other information available to EPA, the Agency believes that a chemical substance is considered likely to meet the requirements for use solely as a closed system intermediate, EPA would not address any developmental toxicity testing needs in this proposed rulemaking. In those cases in which the Agency can determine that chemicals are solely closed system intermediates, it plans to handle them in accordance with the existing OECD procedures.

B. When Would Any Testing Imposed by this Proposed Rulemaking Begin?

The testing requirements contained in this proposed rule are not effective until and unless the Agency issues a final rule. Based on the effective date of the final rule, which is typically 30 days after the publication of a final rule in the **Federal Register**, the test sponsor may plan the initiation of any required testing as appropriate to submit the required final report by the deadline indicated as the number of months after the effective date that would be shown in § 799.5087(j) of the proposed regulatory text.

C. How Would the Studies Proposed Under this Test Rule be Conducted?

Persons required to comply with the final rule would have to conduct the necessary testing in accordance with the testing and reporting requirements established in the regulatory text of the final rule, and with the TSCA Good Laboratory Practice Standards (GLPS) (40 CFR part 792).

D. What Form of Test Substances Would be Tested Under this Rule?

EPA is proposing two distinct approaches for identifying the specific substances that would be tested under this proposed rule, the application of which would depend on whether the substance is considered to be a ''Class 1'' or a ''Class 2'' substance. First introduced when EPA compiled the TSCA Chemical Substance Inventory, the term Class 1 substance refers to a chemical substance having a chemical composition that consists of a single chemical species (not including impurities) that can be represented by a specific, complete structure diagram. By contrast, the term Class 2 substance refers to a chemical substance having a composition that cannot be represented by a specific, complete chemical structure diagram, because such a substance generally contains two or more different chemical species (not including impurities). Table 2 in § 799.5087(j) of the proposed regulatory text identifies the listed chemical substances as either Class 1 or Class 2 substances.

EPA is proposing that, for the Class 1 substances that are listed in the proposed rule, the test substance have a purity of 99% or greater. EPA has generally applied this standard of purity to the testing of Class 1 substances in the past under TSCA section 4(a) testing actions, except for substances where it has been shown that such purity is unattainable. EPA is soliciting comment on whether a purity level of 99% or greater cannot be attained for any of the Class 1 substances listed in this proposed rule. For the Class 2 substances that are listed in the proposed rule, EPA is proposing that the test substance be any representative form of the chemical substance, to be defined by the test sponsor(s).

In proposing a different approach for identifying the substance to be tested with regard to Class 2 substances, EPA recognizes two characteristics which further distinguish Class 1 from Class 2 substances. First, unlike for Class 1 substances, knowledge of the composition of commercial Class 2 substances can vary in quality and specificity from substance to substance.

The composition of the chemical species which comprise a Class 2 substance may be:

- Well-characterized in terms of molecular formulae, structural diagrams, and compositional percentages of all species present (for example, methyl phenol);
- Less well-characterized, for example, characterized only by molecular formulae, non-specific structural diagrams, and/or by incomplete or unknown compositional percentages of the species present (for example, C12–C14 tert-alkyl amines); or
- Poorly characterized because all that is known is the identity of only some of the chemical species present and their percentages of composition, or of only the feedstocks and method of manufacture used to manufacture the substance (for example, nut shell liquor of cashew).

Secondly, the composition of some Class 2 substances may vary from one manufacturer to another, or, for a single manufacturer, from production run to production run, because of small variations in feedstocks, manufacturing methods, or other production variables. A ''Class 2'' designation most frequently represents a group of chemical substances comprising substances that have similar combinations of different

chemical species and/or that were prepared from similar feedstocks using similar production methods. By contrast, Class 1 substances generally represent a much narrower group of substances for which the only variables are their impurities. EPA believes that, for purposes of this proposed rule, the testing of any representative form of a subject Class 2 substance would provide the data necessary to support the development of preliminary or screening level hazard and risk characterizations for the subject Class 2 substance. However, EPA would encourage the selection of representative forms of test substances that meet industry or consensus standards, where they exist. In accordance with TSCA GLPS at 40 CFR part 792, the final study report would be required to include test substance identification information, including name, CAS number, strength, purity, and composition, or other appropriate characteristics. (See 40 CFR 792.185).

As an alternative to requiring the testing of a representative form of a Class 2 substance designated by a person subject to the final rule, EPA is considering whether the Agency should specify the particular form of each chemical substance that must be tested, and, if so, what criteria EPA should use to identify the particular representative form that would be tested. EPA might specify, for example, a form of a substance that meets an industry or consensus specification, if one exists, or the form with the highest production volume, which could potentially be identified via information reported under a TSCA section 8(a) rule, or by other means.

Under both of the approaches described in this unit, manufacturers and processors of each chemical substance listed in this proposed rule would be jointly responsible for the testing of a representative form of each Class 2 substance.

To facilitate EPA's review of exemption applications under this alternative, the Agency would require the submission of certain chemical substance-identifying data, including characteristics and properties of the exemption applicant's substance, such as boiling point, melting point, chemical analysis, additives (if any), and spectral data information.

EPA solicits comment on the proposed alternative approaches to the testing of Class 2 substances included in this proposed rule.

E. Would I Be Required to Test Under this Rule?

Under TSCA section 4(a)(1)(B)(ii), EPA has made preliminary findings that there are insufficient data and experience to reasonably determine or predict health and environmental effects resulting from the manufacture, processing, or use of the chemical substances listed in this proposed rulemaking. As a result, under TSCA section 4(b)(3)(B), manufacturers and processors of these chemical substances, and those who intend to manufacture or process them, would be subject to the rule with regard to those listed chemical substances which they manufacture or process.

1. *Would I be subject to this rule?* You would be subject to this rule and may be required to test if you manufacture (which is defined by statute to include import) or process, or intend to manufacture or process, one or more chemical substances listed in this proposed rule during the time period discussed in Unit IV.E.2. However, if you do not know or cannot reasonably ascertain that you manufacture or process a listed test rule substance (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you would not be subject to the rule for that listed substance.

2. *When would my manufacture or processing (or my intent to do so) cause me to be subject to this rule?* You would be subject to this rule if you manufacture or process, or intend to manufacture or process, a chemical substance listed in this proposed rule at any time from the effective date of the final test rule to the end of the test data reimbursement period. The term ''reimbursement period'' is defined at 40 CFR 791.3(h) and may vary in length for each substance to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed. See Unit IV.E.4.

3. *Would I be required to test if I were subject to the rule?* It depends on the nature of your activities. All persons who would be subject to this TSCA section 4(a) test rule, which, unless otherwise noted in the regulatory text, incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), would fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would have to initially comply with the final rule) would either:

- Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA, or
- Apply to and obtain from EPA exemptions from testing.

Persons in Tier 2 (those who would not have to initially comply with the final rule) would not need to take any action unless they are notified by EPA that they are required to do so (because, for example, no person in Tier 1 had submitted a letter of intent to conduct testing), as described in Unit IV.E.3.d. Note that both persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who actually conduct the testing, as described in Unit IV.E.4.

a. *Who would be in Tier 1 and Tier 2?* All persons who would be subject to the final rule are considered to be in Tier 1 unless they fall within Tier 2. Table 4 of this unit describes who is in Tier 1 and Tier 2.

TABLE 4.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply)	Tier 2 (Persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule substance, and who are not listed under Tier 2	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring chemical substance (as defined at 40 CFR 710.4(b));—As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kg (1,100 lbs.) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (R and D) (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2)).

Under 40 CFR 790.2, EPA may establish procedures applying to specific test rules that differ from the generic procedures governing TSCA section 4(a) test rules in 40 CFR part 790. For purposes of this proposed rule, EPA is proposing to establish certain requirements that differ from those under 40 CFR part 790.

In this proposed test rule, EPA has reconfigured the tiers in 40 CFR 790.42. In addition to processors, manufacturers of less than 500 kg (1,100 lbs.) per year (''small-volume manufacturers''), and manufacturers of small quantities for research and development (''R&D manufacturers''), EPA has added the following persons to Tier 2: Byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this proposed rule. EPA believes that those persons in Tier 1 who would conduct testing under this rule, when finalized, would generally be large chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in testing consortia under previous TSCA section 4(a) test rules.

The Agency also believes that byproduct manufacturers, impurity manufacturers, manufacturers of naturally occurring substances, manufacturers of non-isolated intermediates, and manufacturers of components of Class 2 substances historically have not themselves participated in testing or contributed to reimbursement of those persons who have conducted testing. EPA understands that these manufacturers may include persons for whom the marginal transaction costs involved in negotiating and administering testing arrangements are deemed likely to raise the expense and burden of testing to a level that is disproportional to the additional benefits of including these persons in Tier 1. Therefore, EPA does not believe that the likelihood of the persons proposed to be added to Tier 2 actually conducting the testing is sufficiently high to justify burdening these persons with Tier 1 requirements (e.g., submitting requests for exemptions). Nevertheless, these persons, along with all other persons in Tier 2, would be subject to reimbursement obligations to persons who actually conduct the testing, as described in Unit IV.E.4.

TSCA section 4(b)(3)(B) requires all manufacturers and/or processors of a chemical substance to test that chemical substance if EPA has made findings under TSCA sections 4(a)(1)(A)(ii) or 4(a)(1)(B)(ii) for that chemical substance, and issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing a chemical substance subject to this proposed rule, e.g., manufacturers or processors of a chemical substance as a trace contaminant who are not aware of and cannot reasonably ascertain these activities, would not be subject to the rule. See Unit IV.E.1. and § 799.5087(b)(2) of the proposed regulatory text.

b. *Subdivision of Tier 2 entities*. The Agency is proposing to prioritize which persons in Tier 2 would be required to perform testing, if needed. Specifically, the Agency is proposing that Tier 2 entities be subdivided into:

i. *Tier 2A*. Tier 2 manufacturers, i.e., those who manufacture, or intend to manufacture, a test rule substance solely as one or more of the following: A byproduct, an impurity, a naturally occurring substance, a non-isolated intermediate, a component of a Class 2 substance, in amounts less than 1,100 lbs. annually, or in small quantities solely for research and development.

ii. *Tier 2B*. Tier 2 processors, i.e., those who process, or intend to process, a test rule substance (in any form). The terms ''process'' and ''processor'' are defined by TSCA sections 3(10) and 3(11), respectively.

If the Agency needs testing from persons in Tier 2, EPA would seek testing from persons in Tier 2A before proceeding to Tier 2B. It is appropriate to require manufacturers in Tier 2A to submit letters of intent to test or exemption applications before processors are called upon because the Agency believes that testing costs are traditionally passed by manufacturers along to processors, enabling them to share in the costs of testing (Ref. 54). In addition, ''[t]here are [typically] so many processors [of a given test rule chemical] that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs'' (Ref. 55).

c. *When would it be appropriate for a person who would be required to comply with the rule to apply for an exemption rather than to submit a letter of intent to conduct testing*? You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)). You can find procedures relating to exemptions in 40 CFR 790.80 through 790.99, and § 799.5087(c)(2), (c)(5), (c)(7), and (c)(11) of the proposed regulatory text. In this rule, EPA would not require the submission of equivalence data (i.e., data demonstrating that your substance is equivalent to the substance actually being tested) as a condition for approval

of your exemption. Therefore, 40 CFR 790.82(e)(1) and 40 CFR 790.85 would not apply to this test rule.

d. *What would happen if I submitted an exemption application*? EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA has received a letter of intent to test from another source or has received (or expects to receive) the test data that would be required under this rule, the Agency would conditionally approve your exemption application under 40 CFR 790.87.

The Agency would terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5087(c)(8) of the proposed regulatory text. In addition, the Agency would terminate a conditional exemption if no letter of intent to test has been received by persons required to comply with the rule. See, e.g., § 799.5087(c)(6) of the proposed regulatory text. Note that the provisions at 40 CFR 790.48(b) have been incorporated into the regulatory text of this rule; thus, persons subject to this rule are not required to comply with 40 CFR 790.48 itself (see § 799.5087(c)(4)–(c)(7) and § 799.5087(d)(3) of the proposed regulatory text). Note that persons who obtain exemptions or receive them automatically would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit IV.E.4.

e. *What would my obligations be if I were in Tier 2*? If you are in Tier 2, you would be subject to the rule and you would be responsible for providing reimbursement to persons in Tier 1, as described in Unit IV.E.4. You are considered to have an automatic conditional exemption. You would not need to submit a letter of intent to test or an exemption application unless you are notified by EPA that you are required to do so.

If a problem occurs with the initiation, conduct, or completion of the required testing, or with the submission of the required data to EPA, the Agency may require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5087(c)(10) of the proposed regulatory text.

In addition, you would need to submit a notice of intent to test or an exemption application if:

- No manufacturer in Tier 1 has notified EPA of its intent to conduct testing; and
- EPA has published a **Federal Register** document directing persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications. See § 799.5087(c)(4), (c)(5), (c)(6), and (c)(7) of the proposed regulatory text. The Agency would conditionally approve an exemption application under 40 CFR 790.87, if EPA has received a letter of intent to test or has received (or expects to receive) the test data required under this rule. EPA is not aware of any circumstances in which test rule Tier 1 entities have sought reimbursement from Tier 2 entities either through private agreements or by soliciting the involvement of the Agency under the reimbursement regulations at 40 CFR part 791.

f. *What would happen if no one submitted a letter of intent to conduct testing*? EPA anticipates that it will receive letters of intent to conduct testing for all of the tests specified and chemical substances included in the final rule. However, in the event it does not receive a letter of intent for one or more of the tests required by the final rule for any of the chemical substances in the rule within 30 days after the publication of a **Federal Register** document notifying Tier 2 processors of the obligation to submit a letter of intent to conduct testing or to apply for an exemption from testing, EPA would notify all manufacturers and processors of the chemical substance of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document would additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and would give them an opportunity to take corrective action. If no one has notified EPA of its intent to conduct the required testing of the chemical substance within 30 days after receipt of the certified letter or publication of the **Federal Register** document, all manufacturers and processors subject to the rule with respect to that chemical substance who are not already in violation of the rule would be in violation of the rule.

4. *How do the reimbursement procedures work*? In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(c). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a document in the **Federal Register** concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this proposed rule, amounts manufactured as impurities would be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in Federal court (40 CFR 791.60).

F. What Reporting Requirements are Proposed Under this Test Rule?

You would be required to submit a final report for a specific test by the deadline indicated as the number of months after the effective date of the final rule, which would be shown in § 799.5087(j) of the proposed regulatory text. A robust summary of the final report for each specific test should be submitted in addition to and at the same time as the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled *Draft Guidance on Developing Robust Summaries* (Ref. 15) which is available at: *http://www.epa.gov/HPV/pubs/general/robsumgd.htm*. Persons who respond to this request to submit robust summaries are also encouraged to submit the robust summary electronically via the High Production Volume Information System (HPVIS) to allow for its ready incorporation into HPVIS. Directions for electronic submission of robust summary information into HPVIS are provided at *https://iaspub.epa.gov/oppthpv/metadata.html*. This link will direct you to the ''HPVIS Quick Start and User's Guide.''

G. What Would I Need to Do if I Cannot Complete the Testing Required by the Final Rule?

A company who submits a letter of intent to test under the final rule and who subsequently anticipates difficulties in completing the testing by the deadline set forth in the final rule may submit a modification request to the Agency, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

H. Would There Be Sufficient Test Facilities and Personnel to Undertake the Testing Proposed Under this Test Rule?

EPA's most recent analysis of laboratory capacity (Ref. 47) indicates that available test facilities and personnel would adequately accommodate the testing proposed in this rule.

I. Might EPA Seek Further Testing of the Chemicals in this Proposed Test Rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this proposed rule, the Agency would seek further health and/or environmental effects testing for these chemical substances. Should the Agency decide to seek such additional testing via a test rule, EPA would initiate a separate action for this purpose.

V. Export Notification

Any person who exports, or intends to export, one of the chemical substances contained in this proposed rule in any form (e.g., as byproducts, impurities, components of Class 2 substances, etc.) will be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D, but only after the final rule is issued and only if the chemical is contained in the final rule. Export notification is generally not required for articles, as provided by 40 CFR 707.60(b). Section 12(b) of TSCA states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 must notify the EPA Administrator of such export or intent to export. The Administrator in turn will notify the government of the importing country of EPA's regulatory action with respect to the chemical substance.

VI. Economic Impacts

In addition, EPA has prepared an economic assessment entitled *Economic Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals; Final Report* (Ref. 17), a copy of which has been placed in the public docket for this proposed rulemaking. This economic assessment evaluates the potential for significant economic impacts as a result of the testing that would be required by this proposal. The analysis covers 19 chemical substances. The total social cost of providing test data on the 19 chemical substances that were evaluated in this economic analysis is estimated to be $4.4 million (Ref. 17).

While legally subject to this test rule, processors of a subject chemical would be required to comply with the requirements of the rule only if they are directed to do so by EPA as described in § 799.5087(c)(5) and (c)(6) of the proposed regulatory text. EPA would only require processors to test if no person in Tier 1 has submitted a notice of its intent to conduct testing, or if under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical, the Agency assumes that, for each chemical substance in this proposed rule, at least one such person will submit a letter of intent to conduct the required testing and that person will conduct such testing and will submit the test data to EPA. Because processors would not need to comply with the proposed rule initially, the economic assessment does not address processors.

To evaluate the potential for an adverse economic impact of testing on manufacturers of the chemical substances in this proposed rule, EPA employed a screening approach that estimated the impact of testing requirements as a percentage of each chemical substance's sale price. This measure compares annual revenues from the sale of a chemical substance to the annualized compliance cost for that chemical to assess the percentage of testing costs that can be accommodated by the revenue stream generated by that chemical over a number of years. Compliance costs include costs of testing and administering the testing, as well as reporting costs. Annualized compliance costs divide testing expenditures into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (including laboratory and administrative expenditures) are annualized over 15 years using a 7% discount rate. Annualized testing costs are then divided by the estimated annual revenue of the chemical substance to derive the cost-to-sales ratio. EPA estimates the total annualized compliance cost of testing for the 19 chemical substances evaluated in the economic analysis to be $1.68 million under the average cost scenario. In addition, the TSCA section 12(b) export notification requirements (included in the total and annualized cost estimates) that would be triggered by the final rule are expected to have a negligible impact on exporters. The estimated cost of the TSCA section 12(b) export notification requirements, which, under the final rule, would be required for the first export to a particular country of a chemical subject to the rule, is estimated to range from $25.56 per notice to $80.22 per notice (Ref.17). The Agency's estimated total costs of testing (including both laboratory and administrative costs) annualized testing cost, and public reporting burden hours for this proposed rule are presented in the economic assessment.

Under a least cost scenario, 16 out of the 19 chemical substances (84%) would have a price impact at less than the 1% level. Similarly, 15 out of the 19 chemical substances (79%) would be impacted at less than the 1% level under an average cost scenario. Thus, the potential for adverse economic impact due to the proposed test rule is low for at least 79% of the chemical substances in this proposed rule. Approximately 4 chemicals (21%) of the 19 chemical substances for which price data are available would have a price impact at a level greater than or equal to 1% under the least (average) cost scenario.

EPA believes, on the basis of these calculations, that the proposed testing of the chemical substances presents a low potential for adverse economic impact for the majority of the chemical substances. Because the subject chemical substances have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenue, are very small for most of the chemicals. There are, however, some chemical substances for which the price impact is expected to exceed 1% of the revenue from that chemical. The potential for adverse economic impact is expected to be higher for these chemical substances. In these cases, companies may choose to use revenue sources other than the profits from the individual chemicals to pay for testing. Smaller businesses are less likely to have additional revenue sources to cover the compliance costs in this situation. Therefore, the Agency also compared the costs of compliance to company sales for small businesses.

EPA does not provide quantitative estimates of the benefits from these tests. Ideally, a discussion of benefits would focus on the additional benefits to be gained from new information relative to information that already exists. Such an approach could examine the value of new information provided as a result of the test rule where such information has not been publicly available. Because of constraints on information on the value of information, our evaluation of benefits is qualitative and does not address incremental benefits. We believe, however, that the net benefits of the new information are positive.

VII. Public Comment

As discussed in Units III.D. and III.E., the Agency solicits comment regarding additional information pertaining to potential exposure of workers and consumers, respectively, to the chemical substances identified in this proposed rule. Also, as discussed in Units III.F., the Agency solicits comment regarding additional information pertaining to environmental releases of the chemical substances identified in this proposed rule.

As discussed in Unit III.F., EPA is soliciting comments which identify existing data that may meet the requirements of studies under this proposed rule. To the extent that data relevant to the testing specified in this proposed rule are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule. Data submitted to EPA to meet the requirements of testing under this proposed rule must be in the form of full copies of unpublished studies or full citations of published studies, and may be accompanied by a robust summary (Ref. 15). To the extent that studies required under this proposed rule are currently available, and the data are judged sufficient by EPA, testing for the endpoint/chemical combination will not be required in the final rule based on this proposed rule.

EPA also solicits public comment on the test methods proposed and the analysis detailing the burdens and costs for the regulatory impacts resulting from this rule.

In addition, EPA solicits comment on the proposed and alternative approaches to the testing of Class 2 substances, whether the proposed approach for testing Class 1 substances (i.e., that each Class 1 substance be tested at a purity of 99% or more) should be applied to any Class 2 substances, and whether the proposed or alternative approaches for the testing of Class 2 substances (i.e., that a representative sample of each Class 2 substance be tested) should be applied to any Class 1 substances.

VIII. Materials in the Docket

As indicated under **ADDRESSES**, a docket has been established for this proposed rulemaking under docket ID number EPA–HQ–OPPT–2007–0531. The following is a listing of the documents that have been placed in the public docket for this proposed rule. The docket includes information considered by EPA in developing this proposed rule, including the documents listed in this unit, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the public docket, regardless of whether these referenced documents are physically located in the public docket. For assistance in locating documents that are referenced in documents that EPA has placed in the public docket, but that are not physically located in the docket, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**. The public docket is available for review as specified under **ADDRESSES**.

1. EPA. Data Collection and Development on High Production Volume (HPV) Chemicals. Notice. **Federal Register** (65 FR 81686, December 26, 2000) (FRL–6754–6).

2. EPA. Proposed Test Rule for the Testing of Certain High Production Volume Chemicals. Proposed Rule. **Federal Register** (65 FR 81658, December 26, 2000) (FRL–6758–4).

3. EPA. Final Test Rule for the Testing of Certain High Production Volume Chemicals. Final Rule. 40 CFR part 799. **Federal Register** (71 FR 13708, March 16, 2006) (FRL–7335–2).

4. EPA. TSCA Section 4(a)(1)(B) Final Statement of Policy. Notice. **Federal Register** (58 FR 28736, May 14, 1993).

5. EPA, OPPT. HPV Challenge Program Chemical List. This list is updated periodically, and is available on-line at: *http://www.epa.gov/oppt/chemrtk/pubs/update/hpvchmlt.htm*.

6. OECD Secretariat. Manual for the Investigation of HPV Chemicals. OECD Programme on the Co-Operative Investigation of High Production Volume Chemicals. Paris, France. September 2004. Available on-line at: *http://www.oecd.org/document/7/0,2340,en_2649_34379_1947463_1_1_1_1,00.htm*.

7. International Council of Chemical Associations (ICCA). ICCA HPV Working List of Chemicals. October 2005. This list is updated periodically, and is available on-line at: *http://www.cefic.org/activities/hse/mgt/hpv/hpvinit.htm*.

8. EPA. TSCA section 4(a)(1)(B) Proposed Statement of Policy. Notice. **Federal Register** (56 FR 32294, July 15, 1991).

9. OECD Secretariat. Summary Record of the 13th Joint Meeting of the OECD Chemicals Group and Management Committee of the Special Programme on the Control of Chemicals, November 8–10, 1989. ENV/CHEM/CM/89.2. February 1990.

10. OECD Secretariat. Proposal for Further Work on the Investigation of High Production Volume Chemicals. OECD Chemicals Group and Management Committee of the Special Programme on the Control of Chemicals. ENV/CHEM/CM/89.14. October 1989.

11. OECD. Decision-Recommendation on the Co-Operative Investigation and Risk Reduction of Existing Chemicals–C(90)163/FINAL. January 31, 1991.

12. CMA (ACC). Comments on EPA's TSCA section 4(a)(1)(B) Proposed Statement of Policy submitted to the TSCA Public Docket Office, EPA. September 13, 1991.

13. Epoxy Resin Systems Task Group of the Society of the Plastics Industry, Inc. Comments on EPA's TSCA section 4(a)(1)(B) Proposed Statement of Policy submitted to the TSCA Public Docket Office, EPA. September 13, 1991.

14. EPA, Office of Pollution Prevention and Toxics (OPPT). Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals? April 1998. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/hazchem.htm*.

15. EPA, OPPT. Draft Guidance on Developing Robust Summaries. October, 22, 1999. Available on-line at: *http://www.epa.gov/HPV/pubs/general/robsumgd.htm*.

16. EPA, Office of Prevention, Pesticides and Toxic Substances (OPPTS). Letter from Susan H. Wayland, Deputy Assistant Administrator, to participants in the voluntary HPV Challenge Program. October 14, 1999. Available on-line at *http://www.epa.gov/chemrtk/pubs/general/ceoltr2.htm*.

17. EPA, OPPT, Economics, Exposure and Technology Division (EETD), Economic and Policy Analysis Branch (EPAB). Economic Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals; Final Report. February 2008.

18. EPA, OPPT, EETD. Testing of Certain High Production Volume Chemicals; Second Group of Chemicals (Exposure Findings Supporting Information). July 2008.

19. EPA. OPPT. Chemical Information and Testing Branch (CITB). Response to public comments regarding testing of certain high production volume chemicals. May 31, 2005.

20. NIOSH. National occupational exposure survey field guidelines. Vol. I. Seta JA, Sundin DS, Pedersen DH, eds. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 88–106. 1988. Available on-line at: *http://www.cdc.gov/niosh/88-106.html*.

21. EPA. Inert Reassessment—Oxalic Acid (CAS Reg. No. 144–62–7). Action Memorandum. From: Pauline Wagner, Chief, Inert Ingredient Assessment Branch, To: Lois A. Rossi, Director, Registration Division. September 6, 2005.

22. American Society for Testing and Materials International (ASTM International). Standard Test Method for Relative Initial and Final Melting Points and the Melting Range of Organic Chemicals. ASTM. E 324–99. 1999.

23. ASTM International. Standard Test Method for Vapor Pressure of Liquids by Ebulliometry. ASTM. E 1719–05. 2005.

24. ASTM International. Standard Test Method for Determining Vapor Pressure by Thermal Analysis. ASTM. E 1782–03. 2003.

25. ASTM International. Standard Test Method for Partition Coefficient (*n*-Octanol/Water) Estimation by Liquid Chromatography. ASTM. E 1147–92(2005). 2005.

26. ASTM International. Standard Test Method for Measurements of Aqueous Solubility. ASTM. E 1148–02. 2002.

27. 49. ASTM International. Question about ASTM E 324. E-mail from Diane Rehiel, ASTM, to Greg Schweer, CITB, CCD, OPPT, EPA. September 15, 2004.

28. Meylan, W.M. and Howard, P.H. Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients. *Journal of Pharmaceutical Sciences*. 84(1):83–92. 1995.

29. Meylan, W.M., Howard, P.H., and Boethling, R.S. Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient. *Environmental Toxicology and Chemistry*. 15(2):100–106. 1996.

30. ASTM International. Standard Test Method for Determining Ready, Ultimate, Biodegradability of Organic Chemicals in a Sealed Vessel CO_2 Production Test, ASTM E 1720–01. 2001.

31. International Organization for Standardization (ISO). Water quality—Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium—Method by analysis of inorganic carbon in sealed vessels (CO_2 headspace test). ISO 14593. 1999.

32. ISO. Water quality—Evaluation in an aqueous medium of the ''ultimate'' aerobic biodegradability of organic compounds—Method by analysis of dissolved organic carbon (DOC). ISO 7827. 1994.

33. ISO. Water quality—Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium by determination of oxygen demand in a closed respirometer. ISO 9408. 1999.

34. ISO. Water quality—Evaluation of ultimate aerobic biodegradability of organic compounds in aqueous medium—Carbon dioxide evolution test. ISO 9439. 1999.

35. ISO. Water quality—Evaluation in an aqueous medium of the ''ultimate'' aerobic biodegradability of organic compounds—Method by analysis of biochemical oxygen demand (closed bottle test). ISO 10707. 1994.

36. ISO. Water quality—Evaluation in an aqueous medium of the ultimate aerobic biodegradability of organic compounds—Determination of biochemical oxygen demand in a two-phase closed bottle test (available in English only). ISO 10708. 1997.

37. ISO. Water quality—Guidance for the preparation and treatment of poorly water-soluble organic compounds for the subsequent evaluation of their biodegradability in an aqueous medium. ISO 10634. 1995.

38. ASTM International. Standard Guide for Conducting Acute Toxicity Tests on Test Materials with Fishes, Macroinvertebrates, and Amphibians. ASTM. E 729–96(2002). 2002.

39. ASTM International. Standard Guide for Conducting Static Toxicity Tests with Microalgae. ASTM. E 1218–04e1. 2004.

40. ASTM International. Standard Guide for Conducting Daphnia magna Life-Cycle Toxicity Tests. ASTM. E 1193–97(2004). 2004.

41. Veith, G.D. and Kosian, P. Estimating bioconcentration potential from octanol/water partition coefficients, in Physical Behavior of PCB's in the Great Lakes (MacKay, Paterson, Eisenreich, and Simmons, eds.), Ann Arbor Science, Ann Arbor, MI. 1982.

42. Bintein, S.; DeVillers, J.; and Karcher, W. Nonlinear dependence of fish bioconcentration on *n*-octanol/water partition coefficient. *SAR and QSAR in Environmental Research*, 1:29–39. 1993.

43. EPA. Document containing EPA's Policy Statement under TSCA section 5 entitled *Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances*. Notice. **Federal Register** (64 FR 60194, November 4, 1999) (FRL–6097–7). Available on-line at: *http://www.epa.gov/oppt/newchems/pubs/pbtpolcy.htm*.

44. EPA. Significant New Use Rules; General Provisions for New Chemical Follow-Up. Final Rule. **Federal Register** (54 FR 31307, July 27, 1989).

45. EPA, OPPT. Development of Chemical Categories in the HPV Challenge Program (Draft). August 25, 1999. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/categuid.htm*.

46. EPA, OPPT. Guidance for Testing Closed System Intermediates for the HPV Challenge Program (Draft). March 17, 1999. Available on-line at: *http://www.epa.gov/oppt/chemrtk/pubs/general/closed9.htm*.

47. EPA, OPPT, EETD, EPAB. Analysis of Laboratory Capacity to Support U.S. EPA Chemical Testing Program Initiatives. August 2004.

48. EPA, OPPT. The Use of Structure-Activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program. August 26, 1999. Available on-line at: *http://www.epa.gov/chemrtk/pubs/general/sarfinl1.htm*.

49. EPA, OPPT, EETD, EPAB. Economic Analysis in Support of the TSCA 12(b) Information Collection Request. October 30, 1998.

50. NIEHS 2001b. Guidance Document on Using *In Vitro* Data to Estimate *In Vivo* Starting Doses for Acute Toxicity. NIH Publication No. 01–4500. August 2001. Available on-line at: *http://iccvam.niehs.nih.gov/methods/acutetox/inv_cyto_guide.htm*.

51. NIEHS 2003a. Test Method Protocol for Solubility Determination, *in vitro* Cytotoxicity Validation Study—Phase III. National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). September 24, 2003. Available on-line at: *http://iccvam.niehs.nih.gov/methods/acutetox/invitrocyto/invcyt_proto.htm*.

52. NIEHS 2003b. Test Method Protocol for the BALB/c 3T3 Neutral Red Uptake Cytotoxicity Test, a Test for Basal Cytotoxicity for an *in vitro* Validation Study—Phase III. National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). November 4, 2003. Available on-line at: *http://iccvam.niehs.nih.gov/methods/acutetox/invitrocyto/invcyt_proto.htm*.

53. NIEHS 2003c. Test Method Protocol for the NHK Neutral Red Uptake Cytotoxicity Test, a Test for

Basal Cytotoxicity for an *in vitro* Validation Study—Phase III. National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). November 4, 2003. Available on-line at: *http://iccvam.niehs.nih.gov/methods/acutetox/invitrocyto/invcyt_proto.htm*.

54. EPA. Toxic Substances; Test Rule Development and Exemption Procedures. Interim Final Rule. 40 CFR part 790. **Federal Register** (50 FR 20652, May 17, 1985).

55. EPA. Toxic Substances Control Act; Data Reimbursement. Final Rule. 40 CFR part 791. **Federal Register** (48 FR 31786, July 11, 1983).

56. EPA. OPPT. High Production Volume Chemical Data Information System (HPVIS). Data from HVPIS on 18 HPV chemicals. May 2008.

57. NIOSH. National occupational exposure survey analysis of management interview responses. Vol. III. Pedersen DH, Sieber WK, eds. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 89–103. 1989. Available on-line at: *http://www.cdc.gov/niosh/89-103.html*.

58. NIOSH. National occupational exposure survey sampling methodology. Vol. II. Sieber WK, ed. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 89–102. 1989. Available on-line at: *http://www.cdc.gov/niosh/89-102.html*.

59. ASTM International. Standard Test Method for estimating Acute Oral Toxicity in Rats. ASTM E 1163–98(2002). 2002.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this proposed rule is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, because it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in section 3(f)(4) of the Executive Order. Accordingly, EPA did not submit this proposed rulemaking to OMB for review under Executive Order 12866.

EPA has prepared an economic analysis of this proposed action, which is contained in a document entitled *Economic Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals; Final Report* (Ref. 17). A copy of the economic analysis is available in the docket for this proposed rule and is summarized in Unit VI.

B. Paperwork Reduction Act

This proposed rule does not impose any new or amended paperwork collection requirements that would require additional review and/or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. Although the activities are approved, OMB has specified that the additional burden associated with a new test rule is not covered by the ICR until the final rule is effective. The information collection requirements contained in TSCA section 4 test rules have already been approved by OMB under PRA, and have been assigned OMB control number 2070–0033 (EPA ICR No. 1139). In the context of developing a new test rule, the Agency must determine whether the total annual burden covered by the approved ICR needs to be amended to accommodate the burden associated with the new test rule. If so the Agency must submit an Information Correction Worksheet (ICW) to OMB and obtain OMB approval of an increase in the total approved annual burden in the OMB inventory. The Agency's estimated burden for this test rule is provided in the economic analysis (Ref. 17).

The information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This rulemaking does not propose any new or changes to the export notification requirements, and is not expected to result in any substantive changes in the burden estimates for EPA ICR No. 0795 that would require additional review and/or approval by OMB.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations codified in title 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

The standard chemical testing program involves the submission of letters of intent to test (or exemption applications), study plans, semi-annual progress reports, test results, and some administrative costs. For this proposed rule, EPA estimates the public reporting burden for all 19 chemicals is 9,008 hours, with an estimated burden per chemical of 474 hours (Ref. 17). The estimated burden of the information collection activities related to export notification is estimated to average 1 burden hour for each chemical/country combination for an initial notification and 0.5 hours for each subsequent notification (Ref. 17). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any export notifications that may be required by the Agency's issuance of final chemical test rules. As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

As defined by PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified under **ADDRESSES**. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, after considering the potential economic impacts of this proposed rule on small entities, the

Agency hereby certifies that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this proposed rule (Ref. 17), which is summarized in Unit VI., and a copy of which is available in the docket for this proposed rulemaking. The following is a brief summary of the factual basis for this certification.

Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with the RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the industry profile that EPA prepared as part of the economic analysis for this proposed rulemaking (Ref. 17), EPA has determined that this proposed rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency's analysis presents only the estimated potential impacts on small business.

Two factors are examined in EPA's small entity impact analysis (Ref. 17) in order to characterize the potential small entity impacts of this proposed rule on small business:

1. The size of the adverse economic impact (measured as the ratio of the cost to sales or revenue).

2. The total number of small entities that experience the adverse economic impact.

Section 601(3) of RFA establishes as the default definition of ''small business'' the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which SBA establishes small business size standards (13 CFR 121.201). For this proposed rulemaking, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. In analyzing potential impacts, RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small business impacts for this proposed rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical manufacturing industrial sector (i.e., NAICS codes 325 and 324110), approximately 98% of the firms would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standard for 23% of this industry sector is either 750; 1,000; or 1,500 employees. When assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated in this unit, therefore, the factual basis for RFA determination for this proposed rule is based on an analysis using the default SBA size standards. Although EPA is not currently proposing to establish an alternate definition for use in the analysis conducted for this proposed rule, the analysis for this proposed rule also presents the results of calculations using a standard based on total annual sales (40 CFR 704.3). EPA is interested in receiving comments on whether the Agency should consider establishing an alternate definition for small business to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

The SBA has developed 6 digit NAICS code-specific size standards based on employment thresholds. These size standards range from 500 to 1,500 employees for the various 6 digit NAICS codes that are potentially impacted (Ref. 17). For a conservative estimate of the number of small businesses affected by this proposed rule, the Agency chose an employment threshold of less than 1,500 employees for all businesses regardless of the NAICS-specific threshold to determine small business status.

For each manufacturer of the 19 chemicals covered by this proposed rule, the parent company (ultimate corporate entity, or UCE) was identified and sales and employment data were obtained for companies where data was publicly available. The search determined that there were 48 affected UCEs. Sales and employment data could be found for 45 and 46 of these UCEs (88%), respectively.

Parent company sales data were collected to identify companies that qualified as a ''small business'' for purposes of the RFA analysis. Based on the SBA size standard applied (1,500 employees or less), 20 companies were identified as small.

The potential significance of this proposed rule's impact on small businesses was analyzed by examining the number of small entities that experienced different levels of costs as a percentage of their sales. Small businesses were placed in the following categories on the basis of cost-to sales ratios: less than 1%, greater than 1%, and greater than 3%. This analysis was conducted under both a least and average cost scenario.

Of the 20 small businesses analyzed for small business impacts, one company had no sales data available. Another two companies could not be classified as small or large because there were no employment data available, but were still included in the small business impact analysis. Of the 19 designated as small businesses, none had cost-to-sales ratios of greater than 1% under both the least and average cost scenarios. For the chemicals where sales data were unavailable, EPA used the median sales value sales of all other small businesses equal to $15.4 million. The costs for the three companies were estimated to be well below 0.01% of this sales level. Given these results, the Agency has determined that there is not a significant economic impact on a substantial number of small entities as a result of this proposed rule, if finalized.

The estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of the final rule,

would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $80.22 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $25.56 for each subsequent export notification submitted by that exporter (Refs. 17, 48, and 49). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the chemicals in the final rule, regardless of the size of the exporter.

Any comments regarding the impacts that this action may impose on small entities, or regarding whether the Agency should consider establishing an alternate definition of small business to be used for analytical purposes for future test rules and what size cutoff may be appropriate, should be submitted to the Agency in the manner specified under **ADDRESSES**.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this proposed rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. It is estimated that the total aggregate costs of this proposed rule, which are summarized in Unit VI., would be $4.4 million. The total annualized costs of this proposed rule are estimated to be $1.68 million. In addition, since EPA does not have any information to indicate that any State, local, or tribal government manufactures or processes the chemicals covered by this action such that this rule would apply directly to State, local, or tribal governments, EPA has determined that this proposed rule would not significantly or uniquely affect small governments. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications'' because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. This proposed rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemicals. Because EPA has no information to indicate that any State or local government manufactures or processes the chemical substances covered by this action, this proposed rule does not apply directly to States and localities and will not affect State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any affect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. As indicated previously, EPA has no information to indicate that any tribal government manufactures or processes the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it does not establish an environmental standard intended to mitigate health or safety risks, will not have an annual effect on the economy of $100 million or more, nor does it otherwise have a disproportionate effect on children. This proposed rule would establish testing and recordkeeping requirements that apply to manufacturers (including importers) and processors of certain chemicals, and would result in the development of data about those chemicals that can subsequently be used to assist the Agency and others in determining whether the chemicals in this proposed rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because it is unlikely to have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards because it proposes to require the use of particular test methods. If the Agency makes findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards or test methods that are to be used for the development of the data required in the test rules issued under TSCA section 4. For some of the testing that would be required by this rule, EPA is proposing the use of voluntary consensus standards issued by ASTM and ISO which evaluate the same type of toxicity as the TSCA and OECD test guidelines, where applicable. Copies of the 17 ASTM and ISO standards referenced in the proposed regulatory text at § 799.5087(h) have been placed in the docket for this proposed rulemaking. You may obtain copies of the ASTM standards from the American Society for Testing and Materials, 100 Bar Harbor Dr., West Conshohocken, PA 19428–2959, and copies of the ISO standards from the International Organization for Standardization, Case Postale, 56 CH-1211 Genève 20 Switzerland. In the final rule, EPA intends to seek approval from the Director of the **Federal Register** for the incorporation by reference of the ASTM and ISO standards used in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA is not aware of any potentially applicable voluntary consensus standards which evaluate partition coefficient (*n*-octanol/water) generator column, water solubility (column elution and generator column), acute inhalation toxicity, bacterial reverse mutations, *in vivo* mammalian bone marrow chromosomal aberrations,

combined repeated dose with reproductive/developmental toxicity screen, repeated dose 28–day oral toxicity screen, or the reproductive developmental toxicity screen which could be considered in lieu of the TSCA guidelines, 40 CFR 799.6756, 799.6784, 799.6786, 799.9130, 799.9510, 799.9538, 799.9365, 799.9305, and 799.9355, respectively, upon which the test standards in this proposed rule are based. The Agency invites comment on the potential use of voluntary consensus standards in this proposed rulemaking, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12898

This proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities that require special consideration by the Agency under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). The Agency believes that the information collected under this proposed rule, if finalized, will assist EPA and others in determining the potential hazards and risks associated with the chemicals covered by the rule. Although not directly impacting environmental justice-related concerns, this information will better enable the Agency to better protect human health and the environment, including in low-income and minority communities.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: July 17, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.5087 to subpart D of part 799 that would read as follows:

§ 799.5087 Chemical testing requirements for certain high production volume chemicals; second group of chemicals.

(a) *What substances will be tested under this section*? Table 2 in paragraph (j) of this section identifies the chemical substances that must be tested under this section. For the chemical substances identified as ''Class 1'' substances in Table 2 in paragraph (j) of this section, the purity of each substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as ''Class 2'' substances in Table 2 in paragraph (j), a representative form of each substance must be tested. The representative form selected for a given Class 2 substance should meet industry or consensus standards where they exist.

(b) *Am I subject to this section*? (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 in paragraph (j) of this section at any time from the effective date of the final rule to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 in paragraph (j) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it*? (1) (i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

TABLE 1.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply with this section)	Tier 2 (Persons not initially required to comply with this section)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	Tier 2A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilogram (kg) (1,100 lbs.) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

(ii) Table 1 of paragraph (c)(1)(i) of this section expands the list of persons in Tier 2, that is those persons specified in § 790.42(a)(2), (a)(4) and (a)(5) of this chapter, who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you must, for each test required under this section for that chemical substance, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after the effective date of the final rule.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table

2 in paragraph (j) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5), (c)(7) or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the effective date of the final rule, EPA will publish a **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(5) If you are in Tier 2A (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you manufacture, or intend to manufacture, this chemical substance as of [*date 30 days after date of publication of the final rule in the* **Federal Register**], or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intentto conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(4) of this section, EPA will publish another **Federal Register** document that would specify the test(s) and the chemical substance(s) for which no letter of intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter of intent to test or to apply for an exemption from testing.

(7) If you are in Tier 2B (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you process, or intend to process, this chemical substance as of [*date 30 days after date of publication of the final rule in the* **Federal Register**], or within 30 days after publication of the **Federal Register** document described in paragraph (c)(6) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(6) of this section, either submit to EPA a letter of intent to test or apply to EPA for an exemption from testing. The letter of intent to test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(6) of this section.

(8) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the **Federal Register** document described in paragraph (c)(6) of this section, EPA will notify all manufacturers and processors of those chemical substances of this fact by certified letter or by publishing a **Federal Register** document specifying the test(s) for which no letter of intent has been submitted. This letter or **Federal Register** document will additionally notify all manufacturers and processors that all exemption applications concerning the test(s) have been denied, and will give the manufacturers and processors of the chemical substance(s) an opportunity to take corrective action.

(9) If no manufacturer or processor has notified EPA of its intent to conduct one or more of the tests required by this section for any of the chemical substances listed in Table 2 in paragraph (j) of this section within 30 days after receipt of the certified letter or publication of the **Federal Register** document described in paragraph (c)(8) of this section, all manufacturers and processors subject to this section with respect to that chemical substance who are not already in violation of this section will be in violation of this section.

(10) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, under the procedures in §§ 790.93 and 790.97 of this chapter, EPA may initiate termination proceedings for all testing exemptions with respect to that chemical substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time.

(11) If you are required to comply with this section, but your manufacture or processing of, or intent to manufacture or process, a chemical substance listed in Table 2 in paragraph (j) of this section begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5) or (c)(6) of this section, you must either submit a letter of intent to test or apply to EPA for an exemption. The letter of intent to test or the exemption application must be received by EPA no later than the day you begin manufacture or processing.

(d) *What must I do to comply with this section*? (1) To comply with this section you must either submit to EPA a letter of intent to test, or apply to and obtain from EPA an exemption from testing.

(2) For each test with respect to which you submit to EPA a letter of intent to test, you must conduct the testing specified in paragraph (h) of this section and submit the test data to EPA.

(3) You must also comply with the procedures governing test rule requirements in part 790 of this chapter, as modified by this section, including the submission of letters of intent to test or exemption applications, the conduct of testing, and the submission of data; Part 792—Good Laboratory Practice Standards of this chapter; and this section. The following provisions of 40 CFR part 790 do not apply to this section: Paragraphs (a), (d), (e), and (f) of § 790.45; paragraph (a)(2) and paragraph (b) of §§ 790.80, 790.82(e)(1), 790.85, and 790.48.

(e) *If I do not comply with this section, when will I be considered in violation of it*? You will be considered in violation of this section as of one day after the date by which you are required to comply with this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section*? If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements*? Any person who exports, or intends to export, a chemical substance listed in Table 2 in paragraph (j) of this section is subject to part 707, subpart D, of this chapter.

(h) *How must I conduct my testing*? (1) The tests that are required for each chemical substance are indicated in

Table 2 in paragraph (j) of this section. The test methods that must be followed are provided in Table 3 in paragraph (j) of this section. You must proceed in accordance with these test methods as required according to Table 3 in paragraph (j) of this section, or as appropriate if more than one alternative is allowed according to Table 3 in paragraph (j) of this section.

(i) *Reporting requirements.* A final report for each specific test for each subject chemical substance must be received by EPA by [*date 13 months after the effective date of the final rule*] unless an extension is granted in writing pursuant to 40 CFR 790.55. A robust summary of the final report for each specific test should be submitted in addition to and at the same time as the final report. The term ''robust summary'' is used to describe the technical information necessary to adequately describe an experiment or study and includes the objectives, methods, results, and conclusions of the full study report which can be either an experiment or in some cases an estimation or prediction method. Guidance for the compilation of robust summaries is described in a document entitled *Draft Guidance on Developing Robust Summaries* which is available at: *http://www.epa.gov/HPV/pubs/general/robsumgd.htm.*

(j) *Designation of specific chemical substances and testing requirements.* The chemical substances identified by chemical name, Chemical Abstract Service registry number (CAS No.), and class in Table 2 of this paragraph must be tested in accordance with the requirements designated in Tables 2 and 3 of this paragraph, and the requirements described in 40 CFR Part 792—Good Laboratory Practice Standards:

TABLE 2.—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CAS No.	Chemical Name	Class	Required Tests/ (See Table 3 of this paragraph)
75–07–0	Acetaldehyde	1	C2, F2
78–11–5	1,3-Propanediol, 2,2-bis[(nitrooxy)methyl]-, dinitrate (ester)	1	C4
84–65–1	9,10-Anthracenedione	1	C6
89–32–7	1H,3H-Benzo[1,2-c:4,5-c']difuran-1,3,5,7-tetrone	1	A3, A4, A5, B, C1, D, E1, F1
110–44–1	2,4-Hexadienoic acid, (E,E)-	1	C6, F2
118–82–1	Phenol, 4,4'-methylenebis[2,6-bis(1,1-dimethylethyl)-	1	C1
119–61–9	Methanone, diphenyl-	1	B, C2
144–62–7	Ethanedioic acid	1	A1, A2, A3, A5, B, C1, E2, F2
149–44–0	Methanesulfinic acid, hydroxy-, monosodium salt	1	E1
2524–04–1	Phosphorochloridothioic acid, O,O-diethyl ester	1	A1, A2, A3, A4, A5, B, C1, E1, E2, F2
4719–04–4	1,3,5-Triazine-1,3,5(2H,4H,6H)-triethanol	1	C6
6381–77–7	D-erythro-Hex-2-enonic acid, γ-lactone, monosodium salt	1	A4, B, C1
31138–65–5	D-gluco-Heptonic acid, monosodium salt, (2.xi.)-	1	A1, A2, A4, A5, B, C1, D, E1, E2, F1
66241–11–0	C.I. Leuco Sulphur Black 1	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68187–76–8	Castor oil, sulfated, sodium salt	2	A1, A2, A4, A5, C1, D, E1, E2, F1
68187–84–8	Castor oil, oxidized	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68479–98–1	Benzenediamine, ar,ar-diethyl-ar-methyl-	1	A1, A2, A3, A4, A5, C1, E1, E2, F1
68527–02–6	Alkenes, C12–24, chloro	2	A1, A2, A3, A4, A5, B, C1, D, E1, E2, F1
68647–60–9	Hydrocarbons, C > 4	2	A2, A3, A5, B, C1, D, E1, E2, F1

TABLE 3.—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH

Testing Category	Test	Test Requirements and References	Special Conditions
Physical/Chemical Properties	A	1. Melting Point: ASTM E 324–99 (capillary tube) 2. Boiling Point: ASTM E 1719–05 (ebulliometry) 3. Vapor Pressure: ASTM E 1782–03 (thermal analysis) 4. *n*-Octanol/Water Partition Coefficient (log 10 basis) or log K_{ow}: (See Special Conditions for the log K_{ow} test requirement and select the appropriate method to use, if any, from those listed in this column.) Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147–92(2005) (liquid chromatography) Method C: 40 CFR 799.6756 (generator column) 5. Water Solubility: (See special conditions for the water solubility test requirement and select the appropriate method to use, if any, from those listed in this column.) Method A: ASTM E 1148-02 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	*n-Octanol/water Partition Coefficient* or log K_{ow}: Which method is required, if any, is determined by the test substance's estimated [i] log K_{ow} as follows: log K_{ow} < 0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range > 1–4: Method A or B or C. log K_{ow} range > 4–6: Method B or C. log K_{ow} > 6: Method C. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7. *Water Solubility*: Which method is required, if any, is determined by the test substance's estimated [ii] water solubility. Test sponsors must provide in the final study report the underlying rationale for the method and pH selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted starting at pH 7. > 5,000 mg/L: Method A or B. > 10 mg/L—5,000 mg/L: Method A, B, C, or D. > 0.001 mg/L—10 mg/L: Method C or D. ≤ 0.001 mg/L: no testing required.
Environmental Fate and Pathways—Ready Biodegradation	B	For B, consult ISO 10634 for guidance, and choose one of the methods listed in this column: 1. ASTM 1720–01 (sealed vessel CO_2 production test) OR 2. ISO 14593 (CO_2 headspace test) OR 3. ISO 7827 (analysis of DOC) OR 4. ISO 9408 (determination of oxygen demand in a closed respirometer) OR 5. ISO 9439 (CO_2 evolution test) OR 6. ISO 10707 (closed bottle test) OR 7. ISO 10708 (two-phase closed bottle test)	Which method is required, if any, is determined by the test substance's physical and chemical properties, including its water solubility. ISO 10634 provides guidance for selection of an appropriate test method for a given test substance. Test sponsors must provide in the final study report the underlying rationale for the method selected.
Aquatic Toxicity	C1	For C1, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C1*: 1. Acute Toxicity To Fish: ASTM E 729–96(2002) 2. Acute Toxicity To Daphnia: ASTM E 729–96(2002) 3. Toxicity To Plants (Algae): ASTM E 1218–04e1 *Test Group 2 for C1*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1	The following are the special conditions for C1, C2, C3, C4, C5, and C7 testing; there are no special conditions for C6. Which test group is required is determined by the test substance's measured log K_{OW} as obtained under Test Category A, or using an existing measured log K_{OW}. [iii] If log K_{ow} < 4.2: Test Group 1 is required. If log K_{ow} ≤ 4.2: Test Group 2 is required,

TABLE 3.—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

Testing Category	Test	Test Requirements and References	Special Conditions
	C2	For C2, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See special conditions. *Test Group 1 for C2*: 1. Acute Toxicity To Daphnia: ASTM E 729–96 (2002) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1 *Test Group 2 for C2*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1	
	C3	For C3, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See special conditions. *Test Group 1 for C3*: 1. Acute Toxicity To Fish: ASTM E 729–96 (2002) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1 *Test Group 2 for C3*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97(2004) 2. Toxicity To Plants (Algae): ASTM E 1218–04e1	
	C4	For C4, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See special conditions. *Test Group 1 for C4*: 1. Acute Toxicity To Fish: ASTM E 729–96 (2002) 2. Acute Toxicity To Daphnia: ASTM E 729–96 (2002) *Test Group 2 for C4*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004) 2. [Reserved]	
	C5	For C5, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See special conditions. *Test Group 1 for C5*: 1. Acute Toxicity To Daphnia: ASTM E 729–96 (2002) 2. [Reserved] *Test Group 2 for C5*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004) 2. [Reserved]	
	C6	Toxicity To Plants (Algae): ASTM E 1218–04e1	

TABLE 3.—KEY TO THE TEST REQUIREMENTS DENOTED BY ALPHANUMERIC SYMBOLS IN TABLE 2 OF THIS PARAGRAPH—Continued

Testing Category	Test	Test Requirements and References	Special Conditions
	C7	For C7, Test Group 1 or Test Group 2 listed in this column must be used to fulfill the testing requirements—See special conditions. *Test Group 1 for C7*: 1. Acute Toxicity To Fish: ASTM E 729–96 (2002) 2. [Reserved] *Test Group 2 for C7*: 1. Chronic Toxicity To Daphnia: ASTM E 1193–97 (2004) 2. [Reserved]	
Mammalian Toxicity—Acute	D	See special conditions for this test requirement and select the method that must be used from those listed in this column. *Method A*: Acute Inhalation Toxicity (rat): 40 CFR 799.9130 *Method B*: EITHER: 1. Acute (Up/Down) Oral Toxicity (rat): ASTM E 1163–98 (2002) OR 2. Acute (Up/Down) Oral Toxicity (rat): 40 CFR 799.9110(d)(1)(i)(A)	Which testing method is required is determined by the test substance's physical state at room temperature (25°C). For those test substances that are gases at room temperature, Method A is required; otherwise, use either of the two methods listed under Method B. In Method B, 40 CFR 799.9110(d)(1)(i)(A) refers to the OECD 425 Up/Down Procedure. [iv] Estimating starting dose for Method B: Data from the neutral red uptake basal cytotoxicity assay [v] using normal human keratinocytes or mouse BALB/c 3T3 cells may be used to estimate the starting dose.
Mammalian Toxicity—Genotoxicity	E1	Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510	None
	E2	Conduct any one of the following three tests for chromosomal damage: *In vitro* Mammalian Chromosome Aberration Test: 40 CFR 799.9537 OR Mammalian Bone Marrow Chromosomal Aberration Test (*in vivo* in rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9538 OR Mammalian Erythrocyte Micronucleus Test [sampled in bone marrow] (*in vivo* in rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9539	Persons required to conduct testing for chromosomal damage are encouraged to use the in vitro Mammalian Chromosome Aberration Test (40 CFR 799.9537) to generate the needed data unless known chemical properties (e.g., physical/chemical properties, chemical class characteristics) preclude its use. A subject person who uses one of the in vivo methods instead of the in vitro method to address a chromosomal damage test requirement must submit to EPA a rationale for conducting that alternate test in the final study report.
Mammalian Toxicity—Repeated Dose/Reproduction/Developmental	F1	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365 OR Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355 AND Repeated Dose 28–Day Oral Toxicity Study in rodents: 40 CFR 799.9305	Where F1 is required, EPA recommends use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). However, there may be valid reasons to test a particular chemical using both 40 CFR 799.9355 and 40 CFR 799.9305 to fill Mammalian Toxicity—Repeated Dose/Reproduction/Developmental data needs. A subject person who uses the combination of 40 CFR 799.9355 and 40 CFR 799.9305 in place of 40 CFR 799.9365 must submit to EPA a rationale for conducting these alternate tests in the final study reports. Where F2 or F3 is required, no rationale for conducting the required test need be provided in the final study report.
	F2	Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355	
	F3	Repeated Dose 28–Day Oral Toxicity Study in rodents: 40 CFR 799.9305	

i. EPA recommends, but does not require, that log K_{OW} be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating log K_{OW} is described in the article entitled *Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients* by W.M. Meylan and P.H. Howard in the *Journal of Pharmaceutical Sciences*. 84(1):83–92. January 1992. This reference is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

ii. EPA recommends, but does not require, that water solubility be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating water solubility is described in the article entitled *Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient* by W.M. Meylan, P.H. Howard, and R.S. Boethling in *Environmental Toxicology and Chemistry*. 15(2):100–106. 1996. This reference is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

iii. Chemical substances that are dispersible in water may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. Test sponsors who wish to conduct Test Group 1 studies on such chemicals may request a modification to the test standard as described in 40 CFR 790.55. Based upon the supporting rationale provided by the test sponsor, EPA may allow an alternative threshold or method be used for determining whether acute or chronic aquatic toxicity testing be performed for a specific substance.

iv. The OECD 425 Up/Down Procedure, revised by OECD in December 2001, is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

v. The neutral red uptake basal cytotoxicity assay, which may be used to estimate the starting dose for the mammalian toxicity-acute endpoint, is available under docket ID number EPA–HQ–OPPT–2007–0531 at the EPA Docket Center, Rm. 3334 in the EPA West Bldg. located at 1301 Constitution Ave., NW., Washington, DC, from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

(k) *Effective date*. This section is effective on [*date 30 days after date of publication of the final rule in the* **Federal Register**].

[FR Doc. E8–16992 Filed 7–23–08; 8:45am]

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Federal Register

Thursday,
July 24, 2008

Part IV

Postal Regulatory Commission

39 CFR Part 3020

Administrative Practices and Procedure; Postal Service; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. CP2008–5; Order No. 86]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Commission is adding the Postal Service's negotiated agreement with Global Expedited Package Services to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Re-publication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective July 24, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 32365 (June 6, 2008).

I. Background

On May 20, 2008, the Postal Service filed two notices announcing price and classification changes for competitive products not of general applicability. The notice in Docket No. CP2008–4 informed the Commission that ''the Governors have established prices and classifications for competitive products not of general applicability for Global Expedited Package Services (GEPS) Contracts.''[1] The Postal Service attached a proposed revision of the draft Mail Classification Schedule (section 2610.2) concerning GEPS contracts to the Notice.[2] Docket No. CP2008–4 was filed pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5 and 3020.90. In support of that filing, the Postal Service also filed materials under seal, including the Governors' decision.

The notice in Docket No. CP2008–5, announced an individual negotiated service agreement, namely, a specific GEPS contract the Postal Service entered into with an individual mailer.[3] Docket No. CP2008–5 was filed pursuant to 39 CFR 3015.5. In support of that docket, the Postal Service also filed materials, including the contract and supporting materials, under seal. Given the interrelationship between the two dockets, the Commission consolidated the proceedings for purposes of review under Docket No. CP2008–5. *See* PRC Order No. 78.

In Order No. 78, the Commission reiterated its position that each negotiated service agreement, such as the GEPS contract submitted by the Postal Service, will initially be classified as a separate product, while acknowledging the possibility of grouping functionally equivalent agreements as a single product if they exhibit similar cost and market characteristics. *Id.* at 2–3. This, in effect, invoked the filing and review requirements of 39 CFR part 3020, subpart B, along with the requirements of rule 3015.5 for competitive products.

II. Postal Service Supplemental Filing

On June 10, 2008, the Postal Service filed material responsive to Order No. 78 and 39 CFR part 3020, subpart B.[4] In its response, the Postal Service states that it does not oppose making GEPS contracts' expiration dates publicly available, but continues to maintain that the names of specific GEPS customers must be kept confidential. The Postal Service also states that all previous GEPS contracts, but one, have expired. It states that the one remaining GEPS contract that would not meet the new eligibility requirements expires on July 31, 2008. Furthermore, the Postal Service clarifies in its response that an actual mailing of 5,000 pieces or actual payment of $100,000 is not required under the GEPS contracts shell classification, but rather that the mailer must merely be capable of meeting those thresholds. The material responsive to 39 CFR part 3020, subpart B includes a statement of supporting justification sponsored by Frank Cebello, Executive Director, Global Business Management for the Postal Service. *See* Postal Service Response, Attachment A.

III. Comments

Order No. 78 also provided an opportunity for public comment on the Postal Service's proposals. Comments were received from the Public Representative and United Parcel Service (UPS).[5] Neither the Public Representative nor UPS expresses opposition to the GEPS contract shell classification or the specific GEPS contract proposed by the Postal Service. The Public Representative states in his comments that both the GEPS shell classification and the individual GEPS contract comport with the provisions of title 39. The Public Representative and United Parcel Service both discuss issues encompassing the provision of materials under seal. Public Representative Comments at 2–3; UPS Comments at 1–3.

IV. Commission Analysis

A. Statutory Requirements

The statutory responsibility of the Commission, in this instance, is to assign a new product to either the market dominant list or the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also will preliminarily review the proposal for compliance with the requirements of the Postal Accountability and Enhancement Act (PAEA) of 2006. For proposed competitive products, this includes a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

The Postal Service contends that adding the shell classification (GEPS contracts) as a product will improve the Postal Service's competitive posture. It argues that this can be accomplished while allowing verification that each contract covers attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. Alternatively, the Postal Service states that adding the individual agreement as a product also will improve its competitive posture, but to a lesser degree. Postal Service Response, Attachment A, at 2.

The Commission has reviewed the financial analysis provided under seal that accompanies the agreement and finds that the specific GEPS contract submitted should cover its attributable costs (39 U.S.C. 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on the collective competitive products' ability to provide their appropriate share of institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the GEPS contract indicates that it comports with the

[1] Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, filed on May 20, 2008 (Goverors' Decision Notice.

[2] The draft MCS remains under review. The Commission anticipates providing interested persons an opportunity to comment on the draft MCS in the near future.

[3] *See* Notice of United States Postal Service of Filing a Global Expedited Package Service Contract (Pricing Notice).

[4] United States Postal Service Response to Order no. 78 and Notice of Filing Information Responsive to Part 3020 of the Commission's Rules of Practice and Procedure, June 10, 2008 (Postal Service Response).

[5] Public Represenative Comments in Response to United States Postal Service Notice of Global Expedited Packages Services Contract (Public Representative Comments); Comments of United Parcel Service in Response to Order Concerning Prices Under Global Expedited Package Services Negotiated Service Agreements (UPS Comments); both filed June 16, 2008.

provisions applicable to rates for competitive products.

In determining whether to assign the GEPS contract as a product to the market dominant product list or the competitive product list the Commission must consider whether:

> * * * the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If this is the case, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies in the international shipping industry. Postal Service Response, Attachment A, at 2–3. The Postal Service contends that private consolidators and freight forwarders may offer international shipping arrangements under similar conditions. *Id.* at 3. The Postal Service has no specific data on the views of those that use the products on the regulatory classification. *Id.* at 4. Finally, the Postal Service states that large shippers serve the market under consideration, and that there should be little impact upon small business other than adding an additional option for shipping articles from the United States to foreign destinations. *Id.*

The Commission previously assigned Outbound International to the competitive product list under Negotiated Service Agreements.[6] The Postal Service contends that the proposed GEPS contract falls within this designation. The Commission has not received public opposition to the proposed regulatory classification during the comment period. Having considered the statutory requirements, the argument put forth by the Postal Service, and the public comment, the Commission finds that GEPS contract is appropriately categorized as a competitive product and should be added to the competitive product list. The revisions to the competitive product list are shown below the signature of this order, and shall become effective upon publication in the **Federal Register**.

B. Mail Classification Schedule

The Postal Service previously proposed applicable draft Mail Classification Schedule language for Global Expedited Package Services (GEPS) Contracts.[7] Attachment A to the Governors' decision Notice filed in Docket No. CP2008–4 puts forward changes to that previously proposed language laying out the newly proposed eligibility requirements for GEPS contracts. The MCS remains in draft form. The language filed by the Postal Service will be deemed illustrative until such time as the MCS is finalized.

C. Updating the Mail Classification Schedule

The GEPS contract contains a provision for early termination of the contract. The Postal Service shall promptly notify the Commission of an early termination, but in no event later than the actual termination date. The Commission then will remove the contract from the Mail Classification Schedule at the earliest possible opportunity. The Postal Service also shall notify the Commission of any renewal of the contract 15 days prior its occurrence. Otherwise, the Commission will assume that the contract has lapsed at its designated expiration date and remove the contract from the Mail Classification Schedule without notice.

D. Additional Agreements

As of now, the GEPS contract submitted in Docket CP2008–5, represented as ''GEPS 1'' in the competitive product list, is the product. In the future, the Postal Service may enter into other GEPS contracts substantially similar to the one submitted in Docket CP2008–5. When this occurs, GEPS 1 will be considered the product and the included individual contracts will be treated as price categories under the product.[8]

If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

E. Confidentiality of Information

The Commission is aware that the treatment of information as confidential is a sensitive issue. The Postal Service, the Public Representative, and United Parcel Service all express valid concerns that the Commission will address in the future on a broader level.

In this docket, the Commission will take a limited first step to add transparency and facilitate the process of reviewing future agreements of this style. The Commission has reviewed the Governor's decision supporting the request provided as required by rule 3020.31(b), and has determined that most of the document does not pose a risk of competitive harm if disclosed. In fact, the Postal Service disclosed similar information associated with Docket Nos. CP2008–8, CP2008–9, and CP2008–10. The Postal Service is directed to file a redacted version of the Governor's decision provided under seal in Docket No. CP2008–4.[9]

V. Ordering Paragraphs

It is Ordered:

1. The GEPS contract filed in Docket No. CP2008–5 is added as a product not of general applicability to the competitive product list under Negotiated Service Agreements, Outbound International, as Global Expedited Package Services (GEPS) Contracts, GEPS 1 (CP2008–5).

2. The Postal Service shall file with the Commission a redacted version of the Governors' decision provided under seal in Docket No. CP2008–4 by July 23, 2008.

[6] PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2008, para. 4004, Appendix A, at 9.

[7] *See* United States Postal Service Submision of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007.

[8] This may require future modification of the GEPS 1 descriptive language.

[9] The redacted version should be filed under Docket No. CP2008–5. The Commission anticipates the redacted version will be similar in nature to what the Postal Service provided associated with Docket Nos. CP2008–8, CP2008–9, and CP2008–10, on June 16, 2008.

3. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Issued: June 27, 2008.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. In Appendix A to Subpart A of Part 3020—Mail Classification Schedule revise part B, Competitive Products, section 2000 to read as follows:

* * * * *

Part B—Competitive Products

2000 COMPETITIVE PRODUCT LIST

- Express Mail
  - Express Mail
  - Outbound International Expedited Services
  - Inbound International Expedited Services
    - International Expedited Services 1 (CP2008–7)
- Priority Mail
  - Priority Mail
  - Outbound Priority Mail International
  - Inbound Air Parcel Post
- Parcel Select
- Parcel Return Service
- International
  - International Priority Airlift (IPA)
  - International Surface Airlift (ISAL)
  - International Direct Sacks—M-Bags
  - Global Customized Shipping Services
  - Inbound Surface Parcel Post (at non-UPU rates)
  - International Money Transfer Service
  - International Ancillary Services
- Negotiated Service Agreements
  - Domestic
  - Outbound International
    - Global Expedited Package Services (GEPS) Contracts
      - GEPS 1 (CP2008–5)
    - Global Plus Contracts
      - Global Plus 1 (CP2008–9 and CP2008–10)

[FR Doc. E8–16991 Filed 7–23–08; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 24, 2008

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National Environmental Policy Act Procedures; published 7-24-08

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Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures; published 6-24-08

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BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes; published 6-19-08

Boeing Model 747-400, 747-400D, and 747-400F Series Airplanes; published 6-19-08

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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 3145/P.L. 110–282

To designate a portion of United States Route 20A, located in Orchard Park, New York, as the "Timothy J. Russert Highway". (July 23, 2008; 122 Stat. 2618)

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