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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Doc. No. AMS–DA–07–0069; DA–08–04]

Amendment of General Regulations for Federal Milk Marketing Agreements and Marketing Orders; Addition of Supplemental Rules of Practice for Amendatory Formal Rulemaking Proceedings

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the general regulations for Federal milk marketing agreements and marketing orders by establishing supplemental rules of practice for amendatory formal rulemaking proceedings in accordance with section 1504 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill). This rule provides for supplemental guidelines, timeframes and procedures for amending Federal milk marketing agreements and orders; authorizes the use of informal rulemaking (5 U.S.C. 553) to amend such agreements and orders; and establishes provisions that permit the Department of Agriculture (USDA) to impose assessments on pooled milk under a Federal milk marketing agreement or order to fund expedited amendatory formal rulemaking. Such assessments would supplement appropriated funds for the procurement of services required by USDA to perform rulemaking functions. Section 1504 of the 2008 Farm Bill also applies to amendments to the fruit, vegetable and nut marketing agreements and orders. The supplemental rules of practice for fruit, vegetable and nut marketing agreements and orders are addressed in a separate rulemaking document.

DATES: *Effective Date:* August 20, 2008.

FOR FURTHER INFORMATION CONTACT: William Richmond, Dairy Marketing Specialist, (303) 691–1949, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971–A, 1400 Independence Avenue, SW., Washington, DC 20250–0231. *William.Richmond@usda.gov*

SUPPLEMENTARY INFORMATION: This final rule is issued under the general regulations for Federal marketing agreements and orders (7 CFR part 900), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Act provides authority for Federal marketing agreement and order programs for milk. Federal milk marketing orders contain certain provisions that classify milk in accordance with the purpose for which it is used, and establish a method for setting minimum prices for each such use classification which all handlers pay; and provisions providing for the payment of uniform prices to producers and associations of producers.

Background

Currently, the provisions of 556 and 557 of Title 5 of the United States Code (formal rulemaking; 5 U.S.C. 556–557) are followed for promulgating, as well as amending Federal marketing agreements and orders. Section 557 requires that the rulemaking proceeding, including agency decisions, be conducted on the record.

Following the provisions of 5 U.S.C. 556–557 and part 900 of the general regulations, which includes the rules of practice for formal rulemaking, a request for a hearing on the proposal to promulgate or amend an agreement or order is sent to the Administrator of the Agricultural Marketing Service (AMS). AMS reviews the request and supporting documents, as well as any alternative proposals from interested parties and, if appropriate, a notice of public hearing is issued and published in the **Federal Register**. In some instances, when appropriate, a pre-hearing information session is conducted prior to issuance of a notice of hearing.

A USDA Administrative Law Judge (ALJ) presides at a public hearing and a record is compiled of the testimony of proponents, opponents, and other interested persons. Proposed findings and conclusions, and written arguments or briefs may be filed with USDA after the hearing.

A recommended decision, with opportunity to file exceptions is issued and a Secretary's (final) decision follows. In accordance with the Act, a referendum is conducted among individual producers or a poll of cooperative associations of producers and, if so approved, a marketing order or amendment to the order is made effective by final rule in the **Federal Register**.

Since implementation of the provisions of 7 U.S.C. 7253 concerning the consolidation and reform of the Federal milk marketing orders (65 FR 82840), Dairy Programs, AMS, has initiated a number of measures to improve the timelines and effectiveness of the formal rulemaking process for the amendment of Federal milk marketing orders, whether at the national or individual order level.

For example, as previously mentioned, pre-hearing information sessions have been conducted by Dairy Programs, AMS, in response to proposals submitted by interested persons to amend Federal milk marketing orders. Provision for such pre-hearing information sessions is included in the 2008 Farm Bill. Also, in emergency situations, Dairy Programs, AMS, has omitted a recommended decision or engaged in expedited formal rulemaking, which includes the issuance of a tentative final decision, with opportunity to file exceptions, issuance of an interim final rule, a final decision, and subsequently a final rule. Producer referendums or cooperative pollings are conducted, as appropriate.

Section 608c(17) of the Act provides that the provisions for promulgating a marketing agreement or order are also applicable to amendments to agreements and orders. As such, amendments to the current 10 Federal milk marketing orders are subject to the provisions of this section of the Act.

The 2008 Farm Bill and Supplemental Rules of Practice To Amend Marketing Agreements and Orders

Section 1504 of the 2008 Farm Bill (H.R. 6124, Pub. L. 110–246) makes changes to section 8c(17) of the Act, which, in turn, requires the addition of supplemental rules of practice to 7 CFR part 900. For amendments to Federal

milk marketing agreements and orders, the supplemental rules of practice: Establish guidelines for submitting a proposal to amend a provision of a Federal milk marketing agreement or order; establish procedures following the receipt of a proposal to amend a Federal milk marketing agreement or order, including the opportunity to hold a pre-hearing information session; require a person who submits a proposal to make exhibits and/or written testimony, if prepared as an exhibit, available to USDA officials before the start of hearing on his or her day of appearance at the hearing; establish timeframes for requesting the preparation of USDA data prior to a hearing; define time periods during which interested persons may file post-hearing briefs and corrections to the hearing transcript; establish publication deadlines for recommended decisions and tentative final decisions; define the time period during which interested parties may file exceptions to recommended decisions; establish publication deadlines for final decisions; establish electronic submission standards for post-hearing briefs and transcript corrections; authorize the use of informal rulemaking procedures to amend Federal milk marketing agreements and orders in certain instances; and authorize USDA to impose an assessment on pooled milk to improve or expedite rulemaking proceedings.

Sections 900.1 through 900.18 of the general regulations of part 900 set forth the rules of practice and procedure governing proceedings to formulate marketing agreements and orders. As stated previously, the Act provides that provisions for promulgating marketing agreements and orders are also applicable to amendments to agreements and orders. This final rule amends part 900 by adding supplemental rules of practice regarding amendments to Federal milk marketing agreements and orders to conform to the 2008 Farm Bill. This rule will add new sections 900.20 through 900.33.

A new § 900.20 is added to include standard language to a new subpart stating that words in the singular form will be deemed to import the plural, and vice versa, as the case may demand.

A new § 900.21 is added to set forth that the definitions in the Act and in § 900.2 of this part apply to these supplemental rules of practice.

Proposal Submission Requirements

A new § 900.22 is added to specify submission requirements for proposals to amend Federal milk marketing agreements and orders. The proposal submission requirements in the supplemental rules of practice will assist the dairy industry in preparation of its proposals for a public hearing

Therefore, any proposal to amend a milk marketing agreement or order received by USDA must include detailed explanations of the following:

1. Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?
2. What is the purpose of the proposal?
3. Describe the current Federal order requirements or industry practices relative to the proposal.
4. Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.
5. What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612)? Explain/Quantify.
6. How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.
7. Would a pre-hearing information session be helpful to explain the proposal?

USDA Procedures Following Receipt of a Proposal

A new § 900.23 is added to specify timeframes for actions taken after the receipt of a proposal for an amendment hearing regarding a milk marketing agreement or order. Currently, the rules of practice do not include such timeframes. This final rule adopts provisions that require the following: Within 30 days of the receipt of proposal to amend a provision of a Federal milk marketing order, USDA shall either: (1) Issue a notice providing an action plan and expected timeframes for the different steps in the formal rulemaking process for completion of the hearing not more than 120 days after the date of the issuance of the notice; (2) request additional information from the person submitting the proposal to be used in deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; or (3) deny the request. Notice of an action plan will be made on the Dairy Programs, AMS Web site and through program releases to interested persons.

Pre-Hearing Information Sessions

A new § 900.24 is added to provide that a pre-hearing information session may be held after a proposal to amend an agreement or order is submitted to USDA. Currently, the rules of practice do not provide procedures for such sessions. A pre-hearing information session will give interested parties the opportunity to learn about a proposal that has been submitted and how the proposal will accomplish its intent. The objective of the session is to clarify the intent and effect of a proposed amendment. The session will not be recorded or become part of an official hearing record, and will not be subject to ex-parte rules in 7 CFR 900.16, thereby allowing government officials to openly discuss proposals.

Participation in the session is encouraged for persons who have submitted proposals to ensure that they are understood by USDA. The session will enable participants to better prepare testimony and evidence, thereby supporting or opposing proposals that may be included in a hearing notice.

USDA will determine on a case-by-case basis whether a session will be beneficial to the process. A person submitting a proposal may request a session when submitting a proposal for formal rulemaking. USDA's decision to hold a session does not guarantee a hearing will occur or that any specific proposal will be included in a hearing notice.

The pre-hearing information session will be conducted by USDA representatives. Each person submitting a proposal will have an opportunity to present and explain his or her proposal, ask procedural questions regarding the proposal, and request the preparation of USDA data for use at a possible hearing. Only USDA representatives will ask questions to clarify the information presented by the person submitting the proposal. Other parties may submit questions to be asked of the person who submitted the proposal for consideration by USDA before or during the session.

The session is intended to provide for the open discussion of proposals. In most situations, the session should be completed within one day. All proposals and comments received in response to a specific request for additional proposals will be available to the public via the Dairy Programs, AMS Web site prior to the information session. USDA may provide background information regarding certain topics.

After the close of an information session, the person submitting a proposal will have up to 3 calendar days to modify or withdraw his or her proposal prior to the publication of a notice of hearing.

The Department will consider the information presented at the session to

assist in determining the necessity of a hearing and consistency of a proposal with the Act. If a hearing is to be held, a hearing notice will be published in the **Federal Register**. If it is determined that a proposal does not warrant a hearing, the person who submitted the proposal will be so notified.

Advance Submission of Testimony

A new § 900.25 is added to provide requirements for written testimony submitted as an exhibit at an amendatory Federal milk marketing rulemaking hearing. These requirements only apply to the person who submits a proposal being considered at the amendatory hearing.

Currently, witnesses at hearings regarding proposed new or amended marketing agreements or orders are not required to supply written testimony prior to testifying. However, any documentation supplied during the hearing must be submitted in quadruplicate when prepared as an exhibit under current section 900.8(d)(4). Written testimony and exhibits received prior to or at the time of the testimony are useful for USDA participants whose role includes gathering sufficient information to make a determination as to the merits of the proposal.

This rule will require that a person proposing an amendment to a Federal milk marketing agreement or order under § 900.3 of this part, when participating as a witness, to make his or her testimony, if prepared as an exhibit, and any other exhibits, available to USDA officials before the start of the hearing on the person's day of appearance. Based upon prior formal rulemaking experience, individual dairy farmers should not be subject to this requirement.

This requirement should encourage the timely preparation of written statements and hearing exhibits by hearing participants, and reduce the length of hearings. Advance submission of testimony from a person submitting a proposal will help to ensure more concise and cogent hearing records.

Requesting USDA Data for Use at a Hearing

A new § 900.26 is added to provide requirements for USDA data requests to be used at an amendatory Federal milk marketing hearing. The current rules of practice do not provide timeframes for such requests. USDA officials seek to provide in a timely fashion requested data to hearing participants for use at a hearing and as such the timeframes established are considered reasonable.

Accordingly, under these supplemental rules of practice, requests to USDA, including Market Administrator personnel, for data to be used or presented at an amendatory hearing must be received at least 10 days before the beginning of the hearing. If an amendatory hearing is announced with less than 10 days before the start of the hearing, requests for data need to be submitted within 2 days following the publication of the notice of hearing in the **Federal Register**.

Deadline for Filing Post-Hearing Briefs and Corrections to Transcript

A new § 900.27 is added to provide deadlines for filing briefs and corrections to the transcript after a hearing is completed on an amendment to a Federal milk marketing agreement or order. The 2008 Farm Bill provided that a post-hearing brief may be filed not later than 60 days after the date of an amendatory hearing. The current rules of practice at § 900.9(b) provide that the ALJ presiding at a hearing shall announce a reasonable period of time within which interested persons may file findings and conclusions, and written arguments or briefs. At § 900.10, the rules of practice provide that as soon as possible after the hearing, the ALJ shall transmit a certified copy of the transcript with appropriate corrections to the hearing clerk. The certified copy of the transcript, in turn, may be used by interested persons to file proposed findings and conclusions, and written arguments or briefs. At the hearing, the ALJ announces a reasonable period of time for interested persons to provide proposed corrections to the transcript. In view of the above, the supplemental rules of practice include a deadline for such corrections.

Accordingly, this final rule requires submission of corrections to the transcript by a date determined at the hearing not to exceed 30 calendar days after an amendatory hearing transcript is available. Further, post-hearing briefs must be filed by a date determined at the hearing not to exceed 60 days after the end of the amendatory hearing.

These deadlines provide for reasonable periods of time that will assist in improving timeliness of the rulemaking process.

Deadline for Issuance of Recommended Decisions and Tentative Final Decisions

A new § 900.28 is added to provide deadlines for issuing a recommended decision or, when applicable, a tentative final decision. The 2008 Farm Bill provides that a recommended decision in an amendatory proceeding shall be issued not later than 90 days after the deadline for submission of post-hearing briefs. Accordingly, this final rule requires that USDA must issue a recommended decision or tentative final decision for a proposed amendment to a Federal milk marketing agreement or order no later than 90 days after the deadline for submission of post-hearing briefs.

Deadline for Filing Exceptions to Recommended Decisions

Taking into account the deadlines established in § 900.28 and § 900.30, a new § 900.29 is added to provide a deadline for filing exceptions to a recommended decision. This final rule requires that all exceptions be filed with the hearing clerk no later than 60 days after publication of a recommended decision in the **Federal Register**, unless otherwise specified in the recommended decision. This standard will help to provide for more timely publication of final decisions. Since an interim final rule is issued when a tentative final decision is used, rather than a recommended decision, no similar deadline is provided for exceptions to a tentative final decision.

Deadline for Issuance of a Secretary's (Final) Decisions

A new § 900.30 is added to provide a deadline for issuance of a Secretary's (final) decision. The 2008 Farm Bill provides that a final decision for a proposed amendment to a Federal milk marketing agreement or order shall be issued not later than 60 days after the deadline for submission of comments and exceptions to the recommended decision. Since an interim final rule has been issued prior to issuance of a final rule when a tentative final decision is used, no similar deadline is issued for a final decision in this instance.

Electronic Document Submission Standards

A new § 900.31 is added to provide for the submission of electronic documents in proceedings to amend marketing agreements and orders. The current rules of practice in part 900 require that four copies of all documents related to proposed new and amended marketing agreements and orders be filed with the hearing clerk. With new technologies currently available, most documents in these proceedings are also filed electronically with AMS. The 2008 Farm Bill requires that electronic submission standards be established. Therefore, § 900.31 sets forth that, when possible, all documents filed with the hearing clerk shall also be submitted electronically as specified by Dairy Programs, AMS and reference the

docket number of the proceeding. This provision sets forth that instructions for electronic filing will be provided in the notice of action plan referred to in § 900.23 of this subpart, the amendatory hearing, and in each **Federal Register** publication regarding the amendatory proceeding.

Informal Rulemaking

A new § 900.32 is added to allow the use of informal rulemaking procedures (5 U.S.C. 553) to amend Federal milk marketing agreements and orders that do not directly affect milk prices. Prior to the 2008 Farm Bill, the Act required that all proposals to promulgate a new or amend a current marketing agreement or order were to be conducted through formal rulemaking under §§ 556 and 557 of Title 5 of the United States Code. However, the 2008 Farm Bill modified the authority whereby amendments to marketing agreements and orders can be conducted. It provides that authority under § 553 of the United States Code covering informal rulemaking procedures can be an option for amending a Federal milk marketing agreement or order if that amendment does not directly affect milk prices.

Currently, informal rulemaking procedures are used to establish implementing regulations authorized by marketing agreements and orders. The timeframe for completion of informal rulemaking actions is usually about 90 days, as opposed to formal rulemaking that, because of the procedural requirements including the holding a public hearing and producer referenda, generally has a longer timeframe.

In accordance with the 2008 Farm Bill, § 900.32 will allow the option of using informal rulemaking to amend Federal milk marketing agreements and orders if a proposal does not directly affect milk prices. In considering whether informal rulemaking will be used to amend a Federal milk marketing agreement or order, USDA will consider: the nature and complexity of the proposal, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

Industry Assessments

The 2008 Farm Bill provides for industry assessments. A new § 900.33 is added to allow USDA to assess handlers for costs associated with an amendatory formal rulemaking proceeding to amend a Federal milk marketing agreement or order, if it is determined necessary to improve or expedite the rulemaking proceeding. Currently, administrative costs associated with formal rulemaking are paid for by AMS. These costs include hiring a court reporter, a hearing examiner, legal counsel, and associated travel costs. Some of these costs could increase if it was determined necessary to improve or expedite the proceeding. For example, court reporting costs could increase in order to receive the transcripts at an earlier date than normal.

Section 900.33 states that if USDA determines it is necessary to improve or expedite an amendment proceeding, USDA may impose an assessment on pooled milk to supplement appropriated funds for the procurement of such services including but not limited to court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. Only the milk pooled in the particular marketing area that stands to be affected by proposals heard at the amendatory hearing may be assessed. The assessments will be subject to the provisions of § 1000.85 (7 CFR 1000.85) concerning assessments for order administration. The additional industry assessment shall not exceed $.005 per hundredweight of milk for any given month.

Final Action

In accordance with the 2008 Farm Bill, this final rule establishes supplemental rules of practice regarding amendments to Federal milk marketing agreements and orders.

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.

Subtitle F of Title I of the 2008 Farm Bill provides that the promulgation of these regulations shall be made without regard to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Statement of Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804), and the notice and comment provisions of section 553 of Title 5, United States Code.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988, and for this same reason the notice of proposed rulemaking and opportunity for comment are also not required, as this rule may be effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). Finally, this rule is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). Therefore, this rule is exempt from the requirements of the RFA.

It is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 900

Administrative practice and procedures, Federal milk marketing agreements and orders, Marketing agreements.

■ For the reasons set forth in the preamble, 7 CFR part 900 is amended by adding a new subpart consisting of §§ 900.20 through 900.33 to read as follows:

PART 900—GENERAL REGULATIONS

Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Federal Milk Marketing Agreements and Marketing Orders

Sec.

900.20 Words in the singular form.
900.21 Definitions.
900.22 Proposal submission requirements.
900.23 Procedures following receipt of proposal.
900.24 Pre-hearing information sessions.
900.25 Advance submission of testimony.
900.26 Requesting USDA data for use at a hearing.
900.27 Deadline for filing post-hearing briefs and corrections to transcript.
900.28 Deadline for issuance of recommended decisions or tentative final decisions.
900.29 Deadline for filing exceptions to recommended decisions.
900.30 Deadline for issuance of Secretary's (final) decisions.
900.31 Electronic document submission standards.
900.32 Informal rulemaking.
900.33 Industry assessments.

Authority: 7 U.S.C. 608c(17) and 610.

Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Federal Milk Marketing Agreements and Marketing Orders

§ 900.20 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.21 Definitions.

As used in this subpart, the terms as defined in the Act and in § 900.2 of this part shall apply.

§ 900.22 Proposal submission requirements.

When a person other than the Secretary makes a proposal to amend a Federal milk marketing agreement or order under § 900.3 of this part, the

proposal shall address the following, to the extent applicable:

(a) Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

(b) What is the purpose of the proposal?

(c) Describe the current Federal order requirements or industry practices relative to the proposal.

(d) Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.

(e) What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612)? Explain/Quantify.

(f) How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.

(g) Would a pre-hearing information session be helpful to explain the proposal?

§ 900.23 Procedures following receipt of a proposal.

Within 30 days of receipt of a proposal to amend a Federal milk marketing agreement order under § 900.3 of this part, USDA shall either: Issue a notice providing an action plan and expected timeframes for the different steps in the formal rulemaking process for completion of the hearing not more than 120 days after the date of the issuance of the notice; request additional information from the person submitting the proposal to be used in deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; or deny the request. Notice of the action plan will be made on the Dairy Programs, AMS Web site and through program releases to interested persons.

§ 900.24 Pre-hearing information sessions.

A pre-hearing information session may be held by the Secretary in response to any proposals received under § 900.3 of this part. Any person proposing an amendment to a Federal milk marketing agreement or order may request that a pre-hearing information session be held. A person submitting a proposal shall have up to 3 calendar days to modify or withdraw his or her proposal prior to the publication of a notice of hearing.

§ 900.25 Advance submission of testimony.

Any person proposing an amendment to a Federal milk marketing agreement or order under § 900.3 of this part, when participating as a witness, shall make copies of his or her testimony, if prepared as an exhibit, and any other exhibits available to USDA officials before the start of the hearing on the person's day of appearance. Individual dairy farmers shall not be subject to this requirement.

§ 900.26 Requesting USDA data for use at an amendatory hearing.

Requests for preparation of USDA data to be used at a Federal milk marketing agreement or order amendatory proceeding must be received by USDA at least 10 days before the beginning of the hearing. If an amendatory hearing is announced with less than 10 days before the start of the hearing, requests for data must be submitted within 2 days following publication of the notice of hearing in the **Federal Register**.

§ 900.27 Deadline for filing post-hearing briefs and corrections to transcript.

(a) Under § 900.10 of this part, the period of time for interested persons to file corrections to the transcript of testimony at a Federal milk marketing agreement or order amendatory proceeding shall be no more than 30 days after the hearing record is available.

(b) Under § 900.9(b) of this part, the period of time after the completion of a Federal milk marketing agreement or order amendatory hearing for interested persons to file proposed findings and conclusions, and written arguments or briefs, shall be no more than 60 days after completion of the amendatory hearing.

§ 900.28 Deadline for issuance of recommended decisions or tentative final decisions.

In a Federal milk marketing agreement or order amendatory proceeding, USDA shall issue a recommended decision under § 900.12 or, when applicable, a tentative final decision, not later than 90 days after the deadline for submission of proposed findings and conclusions, and written arguments or briefs.

§ 900.29 Deadline for filing exceptions to recommended decisions.

In a Federal milk marketing agreement or order amendatory proceeding, exceptions to a recommended decision under § 900.12 shall be filed with the hearing clerk not later than 60 days after publication of the recommended decision in the **Federal Register**, unless otherwise specified in that decision.

§ 900.30 Deadline for issuance of Secretary's (final) decisions.

A Secretary's (final) decision under § 900.13a to a proposed amendment on marketing agreement or order shall be issued not later than 60 days after the deadline for submission of exceptions to the recommended decision.

§ 900.31 Electronic submission of hearing documents.

To the extent practicable, all documents filed with the hearing clerk in a proceeding to amend a Federal milk marketing agreement or order shall also be submitted electronically to the Dairy Programs, Agricultural Marketing Service, USDA. All documents should reference the docket number of the proceeding. Instructions for electronic filing will be provided in the notice of action plan referred to in § 900.23 of this subpart, at the amendatory hearing, and in each **Federal Register** publication regarding the amendatory proceeding.

§ 900.32 Informal rulemaking.

USDA may elect to use informal rulemaking procedures under 553 of Title 5, United States Code, to amend Federal milk marketing agreements and orders, other than provisions that directly affect milk prices. In making this determination, consideration shall be given to:

(a) The nature and complexity of the proposal;

(b) The potential regulatory and economic impacts on affected entities; and

(c) Any other relevant matters.

§ 900.33 Industry assessments.

If the Secretary determines it is necessary to improve or expedite an amendatory formal rulemaking proceeding to amend a Federal milk marketing agreement or order, USDA may impose an assessment on pooled milk to supplement appropriated funds for the procurement of such services, including but not limited to, court reporters, hearing examiners, legal counsel, hearing venue and associated travel for USDA officials. Only the milk pooled in the particular marketing area that stands to be affected by proposals heard at the amendatory proceeding may be assessed. The assessments shall be subject to the provisions of § 1000.85 (7 CFR 1000.85) concerning assessments for order administration, including the provision that assessments shall not exceed $.005 per hundredweight of milk for any given month.

Dated: August 13, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–19134 Filed 8–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0666; Airspace Docket No. 08–AGL–6]

Removal of Class E Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E4 Airspace at Chicago, IL as there is no longer a Standard Instrument Approach Procedure (SIAP) for Chicago Aurora Municipal Airport requiring Class E4 airspace.

DATES: *Effective Dates:* 0901 UTC, November 20, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary A. Mallett, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

The VOR–A Approach Procedure was cancelled removing the Class E4 airspace requirement at Chicago Aurora Municipal Airport in Chicago, IL. This rule will become effective on the date specified in the **DATES** section. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of Chicago Aurora Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from the surface of the Earth are published in Paragraph 6004 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be removed from publication subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E4 airspace at Chicago Aurora Municipal Airport, Chicago, IL. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is noncontroversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Chicago Aurora Municipal Airport, Chicago, IL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6004 Class E Airspace Areas Extending Upward From the Surface of the Earth.

* * * * *

AGL IL E4 Chicago, Aurora Municipal Airport [Remove]

* * * * *

Issued in Fort Worth, TX on: August 6, 2008.

Donald R. Smith,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E8–19022 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2008–0628; Airspace Docket No. 07–ASW–15]

RIN 2120–AA66

Revision of Restricted Area 5107A; White Sands Missile Range, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Restricted Area 5107A (R–5107A), White Sands Missile Range, NM, by subdividing the area to reduce the size of R–5107A, and establish R–5107K. Together, R–5107A and R–5107K will occupy the same vertical, but slightly smaller lateral area than the existing R–5107A. The FAA is taking this action in response to a request from the United States (U.S.) Army to divide the existing R–5107A into two restricted areas, R–5107A and R–5107K. This action will fulfill Department of Defense training requirements while freeing unused airspace for use by nonparticipating civil aircraft. Additionally, this action will allow the U.S. Army to activate only that portion of the airspace necessary to contain their operations.

DATES: *Effective Date:* 0901 UTC, September 25, 2008.

FOR FURTHER INFORMATION CONTACT: Kelly Neubecker, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On August 28, 2007, the U.S. Army requested the FAA take action to modify R–5107A, White Sands Missile Range, NM, by subdividing the area to reduce the size of R–5107A and establish R–5107K. The U.S. Army assessed the utilization of the existing R–5107A, and determined their operations are contained to the west side of War Highway 11, 70 to 90 percent of the time. The requested action makes the unused area available for use by nonparticipating civil aircraft. The U.S. Army has also determined that a small area at the northwest corner of the existing R–5107A is not needed and requested a boundary reduction. The subdivision of R–5107A, into R–5107A and R–5107K, will allow airspace managers the opportunity to return unused airspace east of War Highway 11 for use by nonparticipating civil aircraft during periods of inactivity.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revisingR–5107A, White Sands Missile Range, NM, by dividing the area into 2 sub areas, R–5107A and R–5104K. Together, R–5107A and R–5107K will occupy the same vertical, but slightly smaller lateral area by eliminating the northwest corner of the existing R–5107A. Additionally, R–5107K will only be active 0700–2000 local time, Monday through Friday, rather than the current continuous time of designation. Since this action permits greater access to airspace by both Visual Flight Rules and Instrument Flight Rules aircraft during periods of activation of R–5107A and R–5107K, notice and public procedures under 5 U.S.C. 533(b) are unnecessary.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends restricted areas in New Mexico.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.51 [Amended]

■ 2. § 73.51 is amended as follows:

* * * * *

R–5107A White Sands Missile Range, NM [Revised]

Boundaries. Beginning at lat. 32°19′30″ N., long. 106°34′02″ W.; to lat. 32°19′30″ N., long. 106°23′49″ W.; to lat. 32°14′33″ N., long. 106°23′46″ W.; to lat. 32°12′17″ N., long. 106°24′17″ W.; to lat. 32°08′51″ N., long. 106°30′01″ W.; to lat. 32°08′40″ N., long. 106°34′02″ W.; to the point of beginning.

* * * * *

R–5107K White Sands Missile Range, NM [New]

Boundaries. Beginning at lat. 32°19′30″ N., long. 106°23′49″ W.; to lat. 32°19′30″ N., long. 106°20′38″ W.; to lat. 32°24′48″ N., long. 106°09′02″ W.; to lat. 32°23′18″ N., long. 106°07′05″ W.; to lat. 32°05′00″ N., long. 106°18′22″ W.; to lat. 32°05′00″ N., long. 106°29′02″ W.; to lat. 32°06′20″ N., long. 106°34′02″ W.; to lat. 32°08′40″ N., long. 106°34′02″ W.; to lat. 32°08′51″ N., long. 106°30′01″ W.; to lat. 32°12′17″ N., long. 106°24′17″ W.; to lat. 32°14′33″ N., long. 106°23′46″ W.; to the point of beginning.

Designated altitudes. Surface to unlimited.

Time of designation. 0700–2000 local time, Monday–Friday, other times by NOTAM.

Controlling agency. FAA, Albuquerque, ARTCC.

Using agency. Commanding General, U.S. Army Air Defense Artillery Center and Fort Bliss Center, (USAADCENFB) Fort Bliss, TX.

* * * * *

Issued in Washington, DC, on August 14, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–19271 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 6324]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended: Fingerprinting

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of State's regulations relating to the application for a nonimmigrant visa, to generally require all applicants, with certain exceptions, to provide a set of ten scanned fingerprints as part of the application process. The scanning of ten fingerprints of nonimmigrant visa applicants has already been implemented. For the purposes of verifying and confirming identity, conducting background checks, and to ensure that an applicant has not received a visa or entered into the United States under a different name, the Department of State may use the fingerprints in order to ascertain from the appropriate authorities whether they have information pertinent to the applicant's eligibility to receive a visa and for other purposes consistent with applicable law, regulations, and Department policy.

DATES: This rule is effective on August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1202, e-mail (*robertsonce3@state.gov*).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

This rule updates the regulations concerning documents and fingerprints to be provided in support of nonimmigrant visa applications. This amendment is necessary because regulations currently in place do not contain information about the general requirement for nonimmigrant visa applicants to provide ten fingerprints. In response to the requirements established by the Enhanced Border Security and Visa Entry Reform Act of 2002, the collection of fingerprints from most nonimmigrant visa applicants was announced to the public in December 2004 as part of the Biometric Visa Program. At that time, available technology allowed for efficient capture and comparisons of two fingerprints by means of scanning (fingerscans). Later, the process was expanded to 10 fingerscans. Notice of the transition to ten fingerprints was published in the **Federal Register** at 72 FR 25351 (4 May 2007).

What effect does this rule change have on the nonimmigrant visa applicant?

The Biometric Visa Program was introduced gradually, as technology allowed, and is now in place at all posts. Therefore, this rule change will have no effect on applicants.

Must all applicants be fingerprinted?

As described in the **Federal Register** notice, the majority of nonimmigrant visa applicants are required to be finger-scanned as part of the application process. There are currently some exceptions to the fingerprint requirement, including most applicants under the age of 14 years or over the age of 79.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rulemaking procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business.

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulates individual aliens who seek consideration for nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and Visas.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR part 41 to read as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7290 of Pub. L. 108–458, as amended by section 546 of Public Law 109–295).

■ 2. In § 41.105 add paragraph (b) to read as follows:

§ 41.105 Supporting documents and fingerprinting.

* * * * *

(b) *Fingerprinting.* Every applicant for a nonimmigrant visa must furnish fingerprints, as required by the consular officer.

* * * * *

Dated: August 6, 2008.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E8–19316 Filed 8–19–08; 8:45 am]

BILLING CODE 4710–06–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1650

Debt Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is revising its regulation on debt collection to reflect organizational changes, to update statutory and regulatory citations, and to clarify the procedures.

DATES: This rule is effective August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, at (202) 663–4668 (voice), or Lynn T. Dickinson, Senior Attorney, Office of Legal Counsel, at (202) 663–4640 (voice), or (202) 663–7026 (TTY). This final rule is also available in the following formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the EEOC's Publication Center by calling 1–800–669–3362 (voice) or 1–800–669–6820 (TTY).

SUPPLEMENTARY INFORMATION: EEOC is revising its regulation on debt collection found at 29 CFR part 1650. The purpose of the revisions is to reflect organizational changes at EEOC, to update statutory and regulatory citations, to ensure that the subparts are consistent with each other, to eliminate any ambiguities, and to follow more closely the regulations of the Office of Personnel Management (OPM), the Department of Treasury, and the Department of Justice.

Subpart A is revised to reflect changes in the processing of requests for waiver of repayment of salary overpayments. Previously, such requests were submitted to the General Accounting Office (GAO). However, in 1996 the authority to waive collection of these debts was transferred to the Office of Management and Budget (OMB). That same year, OMB delegated this function to agency heads. Therefore, reference to submission of waiver requests to the GAO is deleted.

Subpart A is also revised so that an employee's various options for resolving the matter are separately addressed. An employee can propose a voluntary repayment agreement, request waiver, and ask for a hearing. The language on voluntary repayment agreements mostly formalizes procedures that have been commonly followed in resolving debts. However, the new regulation also clarifies that if an employee proposes a repayment agreement, he or she does not lose the right to request a hearing afterwards if the request is denied. In addition, the revised language regarding hearings clarifies that employees have a right to a paper hearing to contest their debts, but if they would like an oral hearing, they must show that the matter cannot be resolved by reviewing the documentary evidence alone.

Subpart B is revised to reflect changes in the procedures for collecting debts by tax refund offset. Specifically, beginning on January 1, 1998, administration of tax refund offset was transferred from the Internal Revenue Service to the Financial Management Service (FMS). Therefore, the regulation now provides for transmitting these debts to FMS.

In addition, in 1996, Congress enacted the Debt Collection Improvement Act, which required implementation of a centralized offset program. Previously, agencies were required to attempt to collect debts using administrative and salary offset before referring debts for tax refund offset. Under the new centralized offset program, however, debts that are referred to Treasury are subject to administrative offset, salary offset, and tax refund offset. Therefore, all collection activities can be attempted simultaneously. Moreover, agencies do not have to report debts to credit bureaus before they can refer debts to Treasury. Finally, the prior requirement that agencies mail pre-offset notices to the address on file with IRS for debtor was changed. Now, agencies have greater flexibility to locate the best address available.

Subpart C, Administrative Offset, is removed. In its place, the regulation already issued by the Department of Treasury is adopted by reference, as authorized by 37 U.S.C. § 3716(b)(1).

Subpart D, Administrative Wage Garnishment, is merely revised to reflect organizational changes at EEOC, and to use language consistent with other subparts.

Regulatory Procedures

Paperwork Reduction Act

This Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply to this rule because it does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

Regulatory Flexibility Act

As Chair of the Equal Employment Opportunity Commission, I certify under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees and former Federal employees.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and accordingly, is not a rule as that term is used by the Congressional Review Act. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Administrative Procedure Act

These amendments concern matters of agency management or personnel within the meaning of 5 U.S.C. 553(a)(2). Therefore, the notice and comment requirements of the Administrative Procedure Act are not applicable.

Executive Order 12866

This action does not create any of the regulatory impacts specified by Executive Order 12866, is not a significant regulatory action within the meaning of section 3(f) of that Executive Order, and therefore does not require review under Executive Order 12866.

List of Subjects in 29 CFR Part 1650

Administrative offset, Administrative wage garnishment, Debt collection, Salary offset, Tax refund offset.

For the Commission.

Naomi C. Earp,

Chair.

■ For the reasons set forth in the preamble, the Equal Employment Opportunity Commission revises 29 CFR part 1650 to read as follows:

PART 1650—DEBT COLLECTION

Subpart A—Procedures for the Collection of Debts by Salary Offset

Sec.

1650.101 Purpose.
1650.102 Delegation of authority.
1650.103 Scope.
1650.104 Definitions.
1650.105 Notice of Debt.
1650.106 Right to inspect and copy records related to the debt.
1650.107 Voluntary repayment agreements.
1650.108 Waiver.

1650.109 Hearing.
1650.110 Procedures for salary offset.
1650.111 Recovery from other payments due a separated employee.
1650.112 Interest, penalties, and administrative costs.
1650.113 Non-waiver of rights by payments.
1650.114 Refunds.

Subpart B—Procedures for the Collection of Debts by Federal Tax Refund Offset

1650.201 Purpose.
1650.202 Past-due legally enforceable debt.
1650.203 Notification of intent to collect.
1650.204 Reasonable attempt to notify.
1650.205 Consideration of evidence submitted as a result of notification of intent.
1650.206 Notification to Treasury.
1650.207 Administrative charges.

Subpart C—Procedures for Collection of Debts by Administrative Offset

1650.301 Purpose and regulatory procedures for the collection of debts by administrative offset.

Subpart D—Procedures for the Collection of Debts by Administrative Wage Garnishment

1650.401 Purpose and regulatory procedures for the collection of debts by administrative wage garnishment.

Authority: 31 U.S.C. 3701 *et seq.*

Subpart A also issued under 5 U.S.C. 5514; 5 CFR 550.1101.

Subpart B also issued under 31 U.S.C. 3720A; 31 CFR 285.5(d)(4).

Subpart C also issued under 31 U.S.C. 3716.

Subpart D also issued under 31 U.S.C. 3720D.

Subpart A—Procedures for the Collection of Debts by Salary Offset

§ 1650.101 Purpose.

This subpart sets forth the procedures to be followed in the collection by salary offset of debts owed to the United States under 5 U.S.C. 5514. The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the Secretary of the Treasury and the Attorney General of the United States, the Federal Claims Collection Standards (31 CFR Parts 900–904), apply to the administrative collection activities of the EEOC. Debts owed by current federal employees to Government travel charge card contractors will be collected in accordance with the regulations issued by the General Services Administration at 41 CFR Part 301–54.

§ 1650.102 Delegation of authority.

The Chair delegated to the Chief Human Capital Officer the authority to collect debts owed by current EEOC employees, and to the Chief Financial Officer the authority to collect debts owed by former EEOC employees and non-EEOC employees.

§ 1650.103 Scope.

(a) This subpart applies to the collection of certain debts by salary offset against an employee's disposable pay.

(1) This subpart applies to collections by the EEOC from:

(i) Federal employees who are indebted to the EEOC; and

(ii) EEOC employees who are indebted to other agencies.

(2) This subpart does not apply:

(i) To debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the Social Security Act 42 U.S.C. 301 *et seq.*, or the tariff laws of the United States;

(ii) In any case where collection of a debt is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(b) Nothing in this subpart precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711, namely, 31 CFR Parts 900–904; or the waiver of a debt where appropriate under 5 U.S.C. 5584 or 5 U.S.C. 5524a.

§ 1650.104 Definitions.

For the purpose of this subpart, terms are defined as follows:

(a) *Agency* means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Commission* means those officers, employees, and agents of the Equal Employment Opportunity Commission who are responsible for debt collection activities.

(c) *Debt* means money owed by an employee of the Federal Government to an agency of the Federal Government, including direct loans, loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), erroneous salary payments, and all other similar amounts owing to the Federal Government.

(d) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Deductions described in 5 CFR 581.105(b) through (f) will be used to determine disposable pay subject to salary offset.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) *Salary Offset* means the collection of a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

§ 1650.105 Notice of Debt.

(a) *Timing and contents of notice.* Notice of the Commission's intent to collect a debt by salary offset shall be given at least 30 days before salary offset deductions are to begin. The written notice shall include the following:

(1) The Commission's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Commission's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The estimated amount, frequency, beginning date, and duration of the intended deductions;

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy the Commission's records pertaining to the debt or to receive copies of such records if the employee is unable personally to inspect the records, due to geographical or other constraints;

(6) The opportunity to propose a voluntary repayment schedule and agreement that is acceptable to the Commission in lieu of the proposed offset;

(7) The employee's right to a hearing conducted by an impartial hearing official (an Administrative Law Judge or an individual not under the supervision or control of the Chair) with respect to the existence and amount of the debt claimed or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period); the method and time period for requesting a hearing; that the timely request for a hearing will stay the commencement of collection proceedings; and that a final decision will be issued at the earliest practical date, but not later than 60 days after receipt of the hearing request;

(8) The employee's right to request a waiver under 5 U.S.C. 5584 or 5 U.S.C. 5524a, or compromise under 31 U.S.C. 3711;

(9) The making of any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, *31 U.S.C. 3729 et seq.*, or under any other applicable statutory authority; or

(iii) Criminal penalties under *18 U.S.C. 286, 287, 1001,* and *1002* or under any other applicable statutory authority; and

(10) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee.

(b) *Exception to the advance notice requirement.* Advance notice under paragraph (a) of this section is not required:

(1) Where an adjustment to pay arises out of an employee's election of coverage, or change in coverage, under a Federal benefits program requiring periodic deductions from the employee's pay and the amount to be recovered was accumulated over four pay periods or less;

(2) Where a routine intra-agency adjustment of pay is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment;

(3) Where any adjustment of pay to collect a debt amounting to $50 or less is made, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment; or

(4) Where an employee consents to withholdings from his or her current pay account.

(c) *Receipt of notice of debt.* The Notice of Debt will be sent by certified mail, return-receipt requested. The date on which the return-receipt is signed is the date on which the employee is deemed to have received the Notice of Debt.

§ 1650.106 Right to inspect and copy records related to the debt.

An employee who desires to inspect or copy Commission records related to the debt must send a request to the official designated in the Notice of Debt. In response, the Commission will notify the employee of the location and time when the employee may inspect and copy the records or send copies of such records to the employee.

§ 1650.107 Voluntary repayment agreements.

(a) In response to a Notice of Debt, an employee may propose a written repayment schedule in lieu of the proposed salary offset. Any proposal under this subsection must be received by the office of the official designated in the notice within 15 calendar days after receipt of the Notice of Debt.

(b) It is within the Commission's discretion to accept or reject a voluntary repayment proposal. The Commission shall send the employee a written decision.

(c) If the Commission decides that the proposed repayment schedule is unacceptable, and that the written proposed repayment schedule was timely received, the employee shall have a further 15 days from the date he or she received the decision on the proposed repayment schedule in which to file a request for a hearing.

(d) If the Commission decides that the proposed repayment schedule is acceptable, the agreement shall be put in writing and signed by both the employee and the Commission.

§ 1650.108 Waiver.

The Commission may waive debts, to the extent authorized by 5 U.S.C. 5584, arising out of erroneous payments of pay, when collection would be against equity and good conscience and not in the best interests of the United States, and so long as there is no indication of fraud, fault, or lack of good faith on the part of the employee. Interest, penalties, and administrative costs may also be waived under 31 U.S.C. 3717(h) and 31 CFR 901.9(g), on a case-by-case basis, if collection would be against equity and good conscience and not in the best interests of the United States.

§ 1650.109 Hearing.

(a) *Request for a hearing.* An employee who wants a hearing on the existence of the debt, its amount, or on the proposed offset schedule must send a written request to the official designated in the Notice of Debt. The request for a hearing must be received by the designated office on or before the 15th calendar day following receipt by the employee of the Notice of Debt. The request must be signed by the employee and must contain a brief summary of the facts, evidence, and witnesses, if any, that the employee believes support his or her position. If the employee wants an oral hearing, the request must also explain why the matter cannot be resolved by review of documentary evidence alone (*e.g.*, how an issue of credibility or veracity is involved). Because proof of the existence or amount of a debt rarely requires an evaluation of the credibility of witnesses, oral hearings will only rarely be granted. The timely filing of a request for hearing shall automatically stay the commencement of collection proceedings.

(b) *Failure to timely submit.* If the request for hearing is late, the Commission may still grant the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(c) *Procedure.*

(1) *Hearing official.* The hearing official will be an Administrative Law Judge or an individual who is not under the supervision or control of the Chair.

(2) *Notice.* The hearing official shall notify the employee whether the hearing will be oral or documentary. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 days after the request is received. If the hearing will be conducted by examination of documents, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(3) *Oral hearing.* The hearing official may grant a request for an oral hearing if he or she determines that the issues

raised by the employee cannot be resolved by review of documentary evidence alone (*e.g.*, when credibility or veracity are at issue). An oral hearing is not required to be an adversarial adjudication, and the hearing official is not required to apply rules of evidence. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official in which the employee and agency representative are given a full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings in which the hearing examiner interviews the employee and, as necessary, others with relevant evidence; or

(iii) Formal written submissions followed by an opportunity for oral presentation. Witnesses who testify in oral hearings shall do so under oath or affirmation.

(4) *Documentary hearing.* If an oral hearing is not necessary, the hearing official shall make the determination based upon a review of the written record.

(d) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(e) *Date of decision.* The hearing official shall issue a written decision as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Commission, unless the hearing was delayed at the request of the employee, in which case the 60 day decision period shall be extended by the number of days by which the hearing was postponed.

(f) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The revised terms of any repayment schedule, if applicable.

(g) *Failure to appear.* In the absence of good cause, if the employee or the representative of the agency fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentation submitted by both parties.

§ 1650.110 Implementation of salary offset.

(a) *Method of collection.* A debt will be collected in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Commission agree in writing to alternate arrangements for repayment.

(b) *Source of deductions.* Deductions will be made only from basic pay, special pay, incentive pay, retired pay, retainer pay or in the case of an employee not entitled to basic pay, other authorized pay.

(c) *Duration of deductions.* Debts will be collected in one lump sum when possible to minimize interest costs and administrative processing fees for the employee. If the employee is financially unable to pay in one lump sum and the amount of debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, collection by offset will be made in installments. Such installment deductions will be made over a period not greater than the anticipated period of active duty or employment of the employee and, except in rare circumstances, not to exceed 3 years.

(d) *Limitation on amount of deductions.* The size and frequency of installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay. The amount deducted for any period, however, will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than $25 will be accepted only in the most unusual circumstances.

(e) *When deductions may begin.*

(1) If the employee files a timely request for hearing, or a proposed voluntary repayment agreement, deductions will begin in the next bi-weekly salary payment after a final decision is issued on the request or repayment proposal.

(2) If the employee fails to submit a timely request for hearing or proposal for a voluntary repayment agreement, deductions will commence in the next bi-weekly salary payment after the expiration of 30 days following the employee's receipt of the Notice of Debt under 1650.105(c).

(f) *Lump-sum deduction from final check.* When the employee retires, resigns, or ends his or her period of active duty before the debt is collected in full, the employee's debt will be automatically deducted from the final payments (*e.g.*, final salary payment, lump-sum leave, etc.) due the employee to the extent necessary to liquidate the debt. If the employee's final pay is not sufficient to permit all deductions to be made, the order of precedence for the deductions will be: Retirement and FICA; Medicare; Federal income taxes; health benefits; group life insurance; indebtedness due to the United States; State income taxes; and voluntary deductions and allotments.

§ 1650.111 Recovery from other payments due a separated employee.

When a debt owed to EEOC has not been completely liquidated through salary offset and the employee has separated from EEOC, the Commission shall, pursuant to 31 U.S.C. 3716 and the Federal Claims Collection Standards, 31 CFR parts 900–904, seek to offset the balance of the debt against any financial payment due the employee from the U.S. Government.

§ 1650.112 Interest, penalties, and administrative costs.

Unless a debt is paid in full within 30 days of receipt of the Notice of Debt, the Commission will charge interest at the rate established in accordance with 31 U.S.C. 3717 effective on the date of delinquency, and a processing charge pursuant to 31 U.S.C. 3717. The Commission will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2) not to exceed 6 percent a year, on the amount due on a debt that is delinquent more than 90 days. This charge shall accrue from the date of delinquency. If an employee files a timely proposal for a repayment agreement, request for waiver, or a request for a hearing, interest, penalties, and administrative costs will be suspended during the time the Commission is considering such request(s).

§ 1650.113 Non-waiver of rights by payments.

An employee's payment of all or any portion of a debt collected by salary offset will not be construed as a waiver of any right the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 1650.114 Refunds.

Amounts paid, or deducted by salary offset, by an employee for a debt that is waived or otherwise not found owing to the United States will be refunded promptly to the employee. Refunds do not bear interest unless required by law or contract.

Subpart B—Procedures for the Collection of Debts by Federal Tax Refund Offset

§ 1650.201 Purpose.

This subpart establishes procedures for EEOC to refer past-due legally enforceable debts to the Department of the Treasury (Treasury) for offset against the income tax refunds of persons owing

debts to EEOC pursuant to 31 U.S.C. 3720A and 31 CFR 285.2. The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the Secretary of the Treasury and the Attorney General of the United States, the Federal Claims Collection Standards (31 CFR parts 900–904), apply to the administrative collection activities of the EEOC.

§ 1650.202 Past-due legally enforceable debt.

A past due, legally enforceable debt is a debt:

(a) That accrued within ten years of referral to Treasury;

(b) That is at least $25.00; and

(c) That the agency has made reasonable efforts to collect by:

(1) Submitting the debt to Treasury, Financial Management Service, for collection by Administrative Offset and complying with 31 U.S.C. 3716(a) and related regulations, to the extent that collection by administrative offset is not prohibited by statute;

(2) Notifying, or making a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to Treasury for tax refund offset;

(3) Giving the debtor at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, considering any evidence presented by such debtor, and determining that an amount of such debt is past-due and legally enforceable; and

(4) Providing the debtor with an opportunity to make a written agreement to repay the amount of the debt.

§ 1650.203 Notification of intent to collect.

EEOC's notification of intent to collect by tax refund offset shall provide:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of EEOC's notification of intent, EEOC intends to collect the debt by requesting Treasury to offset an amount equal to the amount of the debt and all accumulating interest and other charges against any overpayment of tax after liabilities subject to 26 U.S.C. 6402(a) and (c) have been satisfied;

(c) A mailing address for forwarding any written correspondence and a contact and a telephone number for any questions;

(d) That the debtor may make a written agreement with EEOC to repay the amount of the debt; and

(e) That the debtor may present evidence within 60 days to EEOC that all or part of the debt is not past due or legally enforceable by:

(1) Sending a written request for a review of the evidence to the address provided in the notification;

(2) Stating in the request for review the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Including in the request for review any documents that the debtor wishes to be considered, or stating that the additional information will be submitted within the remainder of the 60 day period.

§ 1650.204 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, EEOC may use the last known address on record with the EEOC. In addition, the EEOC may attempt to obtain a more current address from notices returned by the United States Postal Service, or by using the Treasury's Internal Revenue Service (IRS) address inquiry. If the debtor cannot be notified by EEOC through these procedures, the debt will be sent to Treasury for collection.

§ 1650.205 Consideration of evidence submitted as a result of notification of intent.

(a) *Consideration of evidence.* If, as a result of the notification of intent, EEOC receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, collection will be stayed until EEOC:

(1) Considers the evidence presented by the debtor;

(2) Determines whether all or a portion of the debt is still past-due and legally enforceable; and

(3) Notifies the debtor of its determination.

Failure to submit the evidence within 60 days from the date of notification of intent will result in a referral of the debt to Treasury.

(b) *Notification to the debtor.* Following its review of the evidence, EEOC will issue a written decision notifying the debtor whether EEOC has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken, such as any modification of the debt amount and/or referral of the debt to Treasury, and explain the supporting rationale for the decision.

§ 1650.206 Notification to Treasury.

(a) When referring a debt to Treasury, EEOC will certify that the debt meets all of the requirements in § 1650.202 and will provide the name, taxpayer identifying number (as defined in 26 U.S.C. 6109) of the debtor, the amount of the debt, the date on which the debt became past-due, and the designation of EEOC as the agency referring the debt.

(b) After EEOC's initial notification and referral of a debt to Treasury for offset against a debtor's Federal income tax refund, EEOC will promptly notify Treasury of any changes in the notification, if EEOC:

(1) Determines that an error has been made with respect to the information contained in the notification;

(2) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to Treasury for offset; or

(3) Refunds all or part of the offset amount to the debtor.

(c) When EEOC requests Treasury to increase the amount of a debt owed by a debtor named in EEOC's original notification to Treasury, EEOC will certify that the additional amount meets all of the requirements in § 1650.202.

(d) If the amount of a debt is reduced after referral by EEOC and offset by the Treasury, EEOC will refund to the debtor any excess amount and will promptly notify the Treasury of any refund made by EEOC.

§ 1650.207 Administrative charges.

All administrative charges incurred in connection with the referral of a debt to the Treasury and all costs of collection of the debt will be assessed on the debt and thus increase the amount of the offset.

Subpart C—Procedures for Collection of Debts by Administrative Offset

§ 1650.301 Purpose and regulatory procedures for the collection of debts by administrative offset.

The Commission hereby adopts by cross-reference the administrative offset regulation issued by the Department of the Treasury at 31 CFR 285.5. The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the Secretary of the Treasury and the Attorney General of the United States, the Federal Claims Collection Standards (31 CFR Parts 900–904), apply to the administrative collection activities of the EEOC. The authority to collect debts by administrative offset is delegated to the CFO.

Subpart D—Procedures for the Collection of Debts by Administrative Wage Garnishment

§ 1650.401 Purpose and regulatory procedures for the collection of debts by administrative wage garnishment.

The Commission hereby adopts by cross-reference the administrative wage garnishment regulation issued by the Department of the Treasury at 31 CFR 285.11. The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the Secretary of the Treasury and the Attorney General of the United States, the Federal Claims Collection Standards (31 CFR Parts 900–904), apply to the administrative collection activities of the EEOC. The authority to collect debts by administrative wage garnishment is delegated to the CFO.

[FR Doc. E8–19203 Filed 8–19–08; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS MAKIN ISLAND (LHD 8) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 20, 2008 and is applicable beginning 7 August 2008.

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

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

This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MAKIN ISLAND (LHD 8) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

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

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

■ 1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Two by adding, in numerical order, the following entry for USS MAKIN ISLAND (LHD 8);

■ B. In Table Four by adding paragraph Six, in numerical order, the following entry for USS MAKIN ISLAND (LHD 8); and

■ C. In Table Five by adding, in numerical order, the following entry for USS MAKIN ISLAND (LHD 8):

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

* * * * *

TABLE TWO

Vessel	No.	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I [6]	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii) [6]	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
*		*	*	*	*		*	*	
USS MAKIN ISLAND	LHD 8	8.97					3.08	89.52	
*		*	*	*	*		*	*	

[6] On the following ships the arc of visibility of the after masthead light required by Rule 23(a)(ii) and Annex I, section 2(f) may be obstructed from the right ahead on certain naval ships as follows: USS MAKIN ISLAND (LHD 8)—5°17′.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship; Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light; Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS MAKIN ISLAND	LHD 8	.....	X	X	40.9
*	*	*	*	*	*

Approved: August 7, 2008.

M. Robb Hyde,

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

[FR Doc. E8–19159 Filed 8–19–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS LABOON (DDG 58) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 20, 2008 and is applicable beginning 7 August 2008.

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

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

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS LABOON (DDG 58) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (water), and Vessels.

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

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

■ 1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Four paragraph 16 by removing the entry, in numerical order, for USS LABOON (DDG 58); and

■ B. In Table Five by revising, in numerical order, the following entry for USS LABOON (DDG 58):

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

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions; Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship; Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light; Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS LABOON	DDG 58	X	X	X	20.3
*	*	*	*	*	*

Approved: August 7, 2008.

M. Robb Hyde,

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

[FR Doc. E8–19163 Filed 8–19–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0833]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Gilmerton (U.S. 13/460) Lift Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA. This deviation is necessary to facilitate structural repairs and allows the bridge to remain closed to navigation during the specified dates and times to facilitate structural repairs.

DATES: This deviation is effective from 8 p.m. on September 8, 2008, to 5 a.m. on October 6, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0833 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The contractor on behalf of the City of Chesapeake, who owns and operates this double-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(d).

The Gilmerton (U.S. 13/460) Lift Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, has a vertical clearance in the closed position to vessels of 11 feet above mean high water.

Under this temporary deviation, structural repairs will restrict the operation of the draw span on the following dates and times:

1. Closed-to-navigation, each day from 8 p.m. to 5 a.m., from September 8, 2008 to September 11, 2008, except vessel openings will be provided with at least two hours advance notice given to the bridge operator at (757) 545–1512 or via marine radio on Channel 13.

2. Closed-to-navigation from 8 p.m. on September 12, 2008 through 5 a.m. on September 15, 2008, except vessel openings will be provided at 7 a.m., 1 p.m., and 7 p.m. each day on September 13, 2008 and September 14, 2008.

3. Closed-to-navigation from 8 p.m. on September 19, 2008 through 5 a.m. on September 22, 2008, except vessel openings will be provided at 7 a.m., 1 p.m., and 7 p.m. each day on September 20, 2008 and September 21, 2008.

4. Closed-to-navigation from 8 p.m. on September 26, 2008 through 5 a.m. on September 29, 2008, except vessel openings will be provided at 7 a.m., 1 p.m., and 7 p.m. each day on September 27, 2008 and September 28, 2008.

5. Closed-to-navigation from 8 p.m. on October 3, 2008 through 5 a.m. on October 6, 2008, except vessel openings will be provided at 7 a.m., 1 p.m., and 7 p.m. each day on October 4, 2008 and October 5, 2008.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 8, 2008.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E8–19317 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 169

[USCG–2005–22612]

RIN 1625—AB00

Long Range Identification and Tracking of Ships

AGENCY: Coast Guard, DHS.

ACTION: Notice; announcement of approval of collection of information.

SUMMARY: On April 29, 2008, we published a final rule entitled ''Long Range Identification and Tracking of Ships'' (LRIT). In it we noted that the Office of Management and Budget (OMB) had not yet approved a collection of information, ''Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data,'' associated with the LRIT rule. This document provides notice that on August 12, 2008, OMB approved the referenced collection of information associated with the LRIT final rule.

DATES: On August 12, 2008, OMB approved the collection of information associated with the LRIT final rule published in the **Federal Register** on April 29, 2008 (73 FR 23310).

FOR FURTHER INFORMATION CONTACT: If you have questions on this document contact Mr. William Cairns, Office of Navigation Systems, Coast Guard, telephone 202–372–1557, e-mail *William.R.Cairns@uscg.mil.* If you have questions on viewing the docket (USCG–2005–22612), call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Coast Guard published a final rule concerning long range information and tracking of certain ships to report identifying and position data electronically on April 29, 2008 (73 FR 23310). That rule became effective on May 29, 2008, and contains implementation dates starting December 31, 2008. See 33 CFR 169.220.

The Coast Guard described collection of information provisions in both the final rule and in the LRIT notice of proposed rulemaking (NPRM) published October 3, 2007 (72 FR 56600). In the NPRM, in addition to comments on the

rule, we also requested comments on its collection of information provisions.

The rule's § 169.215 of 33 CFR requires ships to transmit position reports using long range identification and tracking (LRIT) equipment that has been type-approved by their Administration. Its § 169.230 of the same title requires ships' LRIT equipment to transmit position reports at 6-hour intervals unless a more frequent interval is requested remotely by an LRIT Data Center. And its § 169.245 requires a ship's master to inform his or her Flag Administration without undue delay if LRIT equipment is switched off or fails to operate. The master must also make an entry in the ship's logbook that states his or her reason for switching the LRIT equipment off, or an entry that the equipment has failed to operate, and the period during which the LRIT equipment was switched off or non-operational.

The LRIT NPRM and final rule are available electronically through the docket (USCG–2005–22612) at *www.regulations.gov*. On August 12, 2008, under 44 U.S.C. 3505(c), OMB approved the collection of information associated with the requirements in §§ 169.215, 169.230, and 169.245 of the LRIT final rule under OMB control number 1625–0112. A copy of the OMB notice of action is available in our online docket.

Dated: August 15, 2008.

Howard L. Hime,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E8–19307 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0573; FRL–8376–9]

Residues of Quaternary Ammonium Compounds, N-Alkyl (C_{12-18}) dimethyl benzyl ammonium chloride on Food Contact Surfaces; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of n-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride (CAS No. 68424–85–1) on food contact surfaces when applied/used in public eating places, dairy processing equipment, and/or food processing equipment and utensils. The regulation will exempt from the requirement of tolerance residues in food resulting from contact with surfaces treated with antimicrobial solutions where the end-use concentration of active quaternary compound does not exceed 400 ppm.

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

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0573. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Velma Noble, Antimicrobials Division (7510P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6416; e-mail address: *noble.velma@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are dairy cattle milk producer, food manufacturer, or beverage manufacturer. Potentially affected entities may include, but are not limited to:

- Dairy Cattle Milk Production (NAICS code 11212).
- Food manufacturing (NAICS code 311).
- Beverage Manufacturing (NAICS code 3121).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0573. in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 20, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2

may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0573., by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of November 28, 2007 (72 FR 67299) (FRL–8141–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7071) by Edwards-Councilor Co., Inc, 1427 Baker Road Virginia Beach, VA 23455. The petition requested that 40 CFR 180.940(a) be amended by increasing concentration limits for n-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride in end-use solutions eligible for tolerance exemption. That notice referenced a summary of the petition prepared by Edwards-Councilor Co., Inc, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has created a new exemption n-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride (CAS No. 68424–85–1) instead of amending the current exemption for the sake of clarity. The reason for this change is explained in Unit IV.B.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in section 408(c)(2)(B) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement for a tolerance for residues of alkyl (C_{12-18}) dimethyl benzyl ammonium chloride on food contact surfaces when applied/used in public eating places, dairy processing equipment, and/or food processing equipment and utensils. EPA's assessment of exposures and risks associated with amending the exemption from the requirement for a tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by alkyl (C_{12-18}) dimethyl benzyl ammonium chloride as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The alkyl dimethyl benzyl ammonium chlorides(ADBAC) chemical case is comprised of 24 compounds that are structurally similar quaternary ammonium compounds (quats) that are characterized by having a positively charged nitrogen covalently bonded to three alkyl group substituents (two methyls and R component) and a benzyl substituent. The R component represents the different number of hydrocarbon carbon moieties delineated by different percentages (i.e. Alkyl (50% $C_{14,}$ 40% $C_{12,}$ 10% C_{16}) dimethyl benzyl ammonium chloride. In finished form, these quats are salts with the positively charged nitrogen (cation) balanced by a negatively charged anion. The most common anion for the quats in this cluster is chloride. However, other anions, such as saccharide and bromide are also used. The Agency clustered these chemicals together because variance in the length and conformation of alkyl carbon chains between 12 and 18 does not appear to significantly affect the toxicity or fate of ADBAC compound.

In all ADBACs, it is the positive entity (quaternized nitrogen) that is of relevance from toxicology and exposure perspectives. The negative part of ADBAC (counter ion) is a relatively non-toxic entity (chloride). Alkyl (50% $C_{14,}$ 40% $C_{12,}$ 10% C_{16}) dimethyl benzyl ammonium chloride (PC code 069105) was chosen by the Agency as the representative chemical for Group II, ADBAC, and the toxicology database for PC code 069105 is being considered representative of the hazard for the ADBAC class of quaternary ammonium compounds. The individual exposure scenarios in the ADBAC assessments (as well as the aggregate assessment in the RED) were developed by assuming that an ADBAC compound was used on 100 percent of the surfaces authorized on the label that could result in human exposure and summing the percent active ingredients (a.i.) on the labels for all of the ADBAC compounds when used in combination.

ADBACs are corrosive, highly irritating to the eye and skin, with moderate acute toxicity by oral, dermal, and inhalation routes of exposure. These chemicals are classified as ''not likely'' to be human carcinogens based on negative carcinogenicity studies in both rats and mice. There is no evidence of these chemicals being associated with increased susceptibility to developmental toxicity or reproductive toxicity based on two developmental toxicity studies and a 2–generation reproductive study. Lastly, they are negative for mutagenicity and neurotoxicity. Specific information on the studies received and the nature of the toxic effects caused by ADBAC, can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2005–0339, *Alkyl dimethyl benzyl ammonium chloride (ADBAC)- Report of Antimicrobials Division Toxicity*

Endpoint Committee (ADTC) and the Hazard Identification Assessment Review Committee (HIARC).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. The Level of Concern (LOC) is a reference value expressed as either a reference dose/population adjusted dose (RfD/PAD) or margin of exposure (MOE). Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable uncertainty/safety factors. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of a cancer occurrence greater than that expected in a lifetime. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for ADBAC used for human risk assessment is shown in the Table in this unit.

SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ADBAC FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/ Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (General pop., females 13+, infants and children)	An acute dietary endpoint was not identified in the database.		
Chronic dietary (All populations)	NOAEL = 44 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.44 mg/kg/day cPAD = 0.44 mg/kg/day	Chronic toxicity/ carcinogencity-rat MRID 41947501 LOAEL = 88 mg/kg/day based on decreased body weight and weight gain
Incidental oral short-term (1 to 30 days)	NOAEL = 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Toxicity-Rat MRID 42351501 LOAEL = 30 mg/kg/day based on clinical signs and decrease body weight gain
Incidental oral intermediate-term (1 to 6 months)	NOAEL = 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Toxicity-Rat MRID 42351501 LOAEL = 30 mg/kg/day based on clinical signs and decrease body weight gain
Dermal short-term (1 to 30 days) (Formulated product (4% ai.))	Dermal study NOAEL = 20 mg/kg/day (333 $\mu g/cm^2$)[b] UF_A = 3 x UF_H = 3x FQPA SF = 1x	LOC for MOE = 10 [d]	21–day dermal toxicity-guinea pigs MRID 41105801 LOAEL = 40 mg/kg/day based on denuded non-vascularized epidermal layer
Dermal intermediate-term (technical grade a.i.) (1 to 6 months)	Dermal study NOAEL = 20 mg/kg/day (80 $\mu g/cm^2$)[c] UF_A = 3 x UF_H = 3x FQPA SF = 1x	LOC for MOE = 10 [d]	90–day dermal in rats MRID 41499601 LOAEL = 20 mg/kg/day based on highest doest tested before irritation became significant. Irritation not observed until day 43
Dermal Short-term (technical grade a.i)	No endpoint identified from the available data on dermal irritation. Dermal irritation in the 90–day dermal toxicity study was not evident until day 43 (MRID 41499601)[d]		
Long-Term Dermal (technical grade a.i.)	No appropriate endpoint identified. No systemic effects observed up to 20 mg/kg/day, highest dose of technical that could be tested without irritation effects.[d]		

SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ADBAC FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/ Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Inhalation (all exposures)	Oral study NOAEL = 3 mg/kg/day 100%) UF_A = 10x UF_H = 10 x UF =10x[a] FQPA SF = 1x	LOC for MOE = 1,000	Developmental Toxicity-rabbit MRID 42392801 LOAEL = 9 mg/kg/day based on clinical signs of toxicity in maternal animals

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

[a] An additional uncertainity factor of 10x is applied for use of an oral endpoint for route-to-route extrapolation to determine if a confirmatory inhalation toxicity study is warranted.

[b] Formulated-based dermal endpoint = (20 mg/kg guinea pig x 0.43 kg guinea pig x 1,000 μg/mg)/ 25.8 cm^2 area of guinea pig dosed = 33 μg/cm^2.

[c] TGAI-based dermal endpoint = (20 mg/kg rat x 0.2 kg rat x 1,000 μg/mg)/ 50 cm^2 area of rate dosed = 80 μg/cm^2.

[d] For dermal exposures, irritation as the effect was selected for the short-term endpoint and a reduced margin of exposure (MOE) was used to characterize the risk. The use of irritation as a toxic endpoint for assessment of dermal risk is appropriate in this case, as dermal exposure that results in primarily an irritation response is considered a self-limiting type of exposure that is not expected to last for any length of time, and variability in the response is not expected to be as great as systemic toxic responses. For ADBAC, the MOE for short-term dermal risk is reduced to a total factor of 10x(3x for interspecies extrapolation, 3x for intraspecies variation

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to n-Alkyl (C_{12-18}) Dimethyl Benzyl Ammonium Chloride, EPA considered exposure under the petitioned-for exemption as well as all existing ADBAC exemptions or tolerances in (40 CFR 180.940(a), and (c)). EPA assessed dietary exposures from ADBAC in food as follows:

ADBACs are to be used as a sanitizer on counter tops, utensils, appliances, tables, refrigerators, food packaging, and beverage bottling. The use of these actives in antimicrobial products for use on food or feed contact surfaces, agricultural commodities, and application to food-grade eggs may result in pesticide residues in human food. Residues from treated surfaces, such as utensils, countertops, equipment, and appliances can migrate to food coming into contact with the treated and rinsed surfaces and can be ingested by humans.

The Agency assessed chronic dietary exposures from the use of ADBAC as a disinfectant and food contact sanitizer on utensils, countertops, and in food/ beverage processing facilities. The assessment calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI) using modified FDA methodologies for utensils and Indirect Dietary Residential Exposure Model software (IDREAM) for countertops. IDREAM incorporates consumption data from USDA's Continuing Surface of Food Intakes by Individuals (CSFII) for 1994–1996, and 1998. The 1994–1996, and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days.

The Estimated Daily Intake (EDI) calculations presented in this assessment for treated indirect dietary exposures resulting from sanitizing utensils assumed that food would contact 4,000 cm^2 (which represents contact with treated silverware, china, and glass used by an individual who regularly eats three meals per day at an institutional or public facility) and that the residual solution remaining on the surface or pesticide migration fraction is 1 milligram (mg) per square centimeter of treated area. The body weights used for this assessment were 70 kilogram (kg) for an adult male, 60 kg for an adult woman, and 10 kg for an infant. Based on data provided in a new residue study, Transferability Equivalence among Quats and Measured Food Surrogate Transfer Efficiency (MRID 46870703), a conservative transfer rate of 43% was used to estimate the amount of residues on the surface that will be transferred to food and subsequently ingested. The maximum application rate for ADBAC on utensils is 0.0033 lbs a.i per gallon of treatment solution.

There are two levels of refinement for assessing dietary exposure to antimicrobial products used on countertops. The three dimensional approach, Tier 2, was utilized for this assessment. This conservative approach uses food consumption and preparation patterns as well as data and assumptions that are not chemical specific. Food ingredients are separated into nine categories based on food preparation, food physical properties, and potential, or likelihood of contact with treated countertops. The nine food categories are liquids, fruit, bread, cheese, vegetable, meat, purees (e.g., pudding, oatmeal), pieces (foods normally consumed in small pieces), and powders (foods normally used in powder/granular forms). Assumed countertop residues are converted to estimated residues contacting the countertops using a translation factor for each food category, and default residue transfer efficiency for a representative food. Therefore, IDREAM combines the estimated countertop residues for surface treatment products, CSFII consumption data, food-specific conversion factors that relate the surface area contacting a countertop with corresponding weight of the food item, and the transfer efficiency of residues from countertops to food. Conservative assumptions for these analyses include: All disinfectants registered to disinfect kitchen countertops are included; all foods are prepared on treated countertops; all prepared foods will come in contact with treated countertops at the maximum active ingredient residues; these residues will not diminish over time (i.e. residue reduction will not occur from cooking or preparation processes); there is a 100% likelihood of contact to account for both commercial and residential scenarios; all commercial facilities and households use the same disinfectant product; all foods are prepared and consumed.

When assessing the food bottling/ packaging use, EPA assumed a 100% transfer rate because the food is potentially in contact with the treated surfaces for very long periods of time. The maximum application rate for ADBAC for bottling/packing of food is 0.0103 lbs a.i per gallon of treatment solution. EDI values were calculated

using an approach similar to that used for treated food utensils. Exposure was assumed to occur through the ingestion of three food products that might be packaged in treated material: Milk, egg products, and beverages (alcoholic and non-alcoholic). A calorie intake modification factor of 0.64 was applied to the EDI for a child to account for the differences between intake values among children and adults. The calculated % cPADs for all population subgroups do not exceed 100% and therefore are not of a concern.

2. *Dietary exposure from drinking water.* ADBAC is applied to nursery ornamentals and turf as an bactericide and fungicide. The Tier 1 surface water and ground water model was used to assess Estimated Drinking Water Concentrations (EDWCs). EPA modeled the ornamental plant use because this use has the highest application rate of all labeled uses — 302 lbs. a.i/Acre, and a maximum of three applications per year. The EDWCs determined for the nursery ornamental use are also protective of all other uses with lower application rates. The EDWC for surface water is 331 microgram/Liter (µg/L) and ground water is 5.4 µg/L. There were no major degradates of ADBAC in the laboratory studies.

ADBAC is also used for mosquito control and as an algaecide in decorative ponds and pools. Because the mosquito control and algaecide uses are both periodic in nature and are restricted to a limited use area, EPA expects drinking water exposures from these uses to be minimal in comparison to the ornamental plant exposure estimate for drinking water using the tier I surface and ground water model. Additionally, antisapstain and cooling water tower uses for ADBAC are potential exposures to drinking water. These uses are also expected to result in minimal exposure in comparison to the modeled EDWCs for the ornamental use taking into account that the Tier 1 model assumed that ADBAC was applied at 302 pounds/acre across the entire watershed.

Specific information on the dietary and drinking water exposure assessments for ADBAC can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–0339 *Dietary Risk Assessment on ADBAC and Tier 1 Drinking Water Assessment for Alkyl Dimethyl Benzyl Ammonium Chloride (ADBAC) and Didecyl Dimethyl Ammonium Chloride (DDAC).*

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

ADBAC is currently registered for the following residential non-dietary sites: Homes, swimming pools, humidifiers. EPA assessed residential exposure using the following assumptions: Residential exposure may occur during the application as well as post application of ADBAC to indoor hard surfaces (e.g., mopping, wiping, trigger pump sprays), carpets, swimming pools, wood as a preservative, textiles (e.g., diaper treated during washing and clothes treated with fabric spray), and humidifiers. The residential handler scenarios were assessed to determine dermal and inhalation exposures. Residential post application scenarios such as children exposure to treated toys and floors were also assessed to determine dermal and incidental oral exposures. Surrogate dermal and inhalation unit exposure values were estimated using Pesticide Handler Exposure Database (PHED) data and the Chemical Manufactures Association Antimicrobial Exposure Assessment Study (USEPA, 1999), and the SWIMODEL 3.0 was utilized to conduct exposure assessments of pesticides found in swimming pools and spas (Versar, 2003). Note that for this assessment, EPA assumed that residential users complete all elements of an application (mix/load/apply) without the use of personal protective equipment.

The duration for most residential exposures is believed to be best represented by the short-term duration (1 to 30 days). The short-term duration was chosen for this assessment because the residential handler and post-application scenarios are assumed to be performed on an episodic, not daily basis.

Specific information on the residential exposure assessment for ADBAC Quaternaries can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–0339 *Alkyl Dimethyl Benzyl Ammonium Chloride (ADBAC) Occupational and Residential Exposure Assessment.*

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

EPA's risk assessment for any individual ADBAC is based on an assessment of the cumulative exposure to all ADBACs. The individual exposure scenarios in the ADBAC assessments (as well as the aggregate assessment in the RED) were developed by assuming that an ADBAC compound was used on 100 percent of the surfaces authorized on the label that could result in human exposure and summing the percent active ingredients on the labels for all of the ADBACs when used in combination. Thus, because the risk assessment for ADBAC accounts for exposures to all of the ADBACs, there is no need for a separate cumulative risk assessment for those compounds. The Agency has not identified any other substances as sharing a common mode of toxicity with ADBAC. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional (10X) tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA SF value based on the use of traditional UFs and/or FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no evidence that ADBAC result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1X. That decision is based on the following findings:

i. The toxicity database for ADBAC pertaining to the risks to infants and childrenis complete.

ii. There is no indication that ADBAC is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that ADBAC results in increased susceptibility in *in utero* rats or rabbits in the prenatal

developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. Conservative ground water and surface water modeling estimates were used. Similarly conservative residential standard operating procedures (SOPs) were used to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by ADBAC.

E. Aggregate Risks and Determination of Safety

The chronic dietary aggregate risk assessment includes direct and indirect food contact uses as well as drinking water exposures. Based on the results of the chronic aggregate assessment, the estimated chronic risks for adults and children are 8.4% and 40.9% of the respective cPADs. Therefore, the chronic dietary aggregate risks are not of concern (i.e., less than 100% of cPAD).

Short-term and intermediate-term aggregate risks were calculated using the total MOE approach. Only the short-term aggregate is presented here because the endpoints for incidental oral as well as inhalation are identical for the short- and intermediate-term durations. Moreover, EPA has not identified that aggregate risks are not of concern for adults for any of the three routes of exposure. The aggregate adult MOEs are 1,200 for oral, 480 for dermal, and 2,000 for inhalation, which are greater than the target MOE of 100 for the oral, 1,000 for inhalation, and 10 for dermal. For children, the aggregate risk estimate for each of the routes of exposure are also above the target MOEs of 100 for the oral, 1,000 for inhalation, and 10 for dermal (MOE = 140 for the oral route, 1,200 for the dermal route, and no co-occurrence for the inhalation route), and thus are not of concern.

Based on the toxicological and exposure data discussed in this preamble, EPA concludes that ADBAC will not pose a risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty of no harm will result to the general population, or to infants and children from aggregate exposure to ADBAC residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An analytical method for food is not needed for enforcement purposes. Food contact sanitizers are typically regulated by the State health departments to ensure that the food industry is using products in compliance with the regulations in 40 CFR 180.940. The end-use solution that is applied to the food contact surface is analyzed, rather than food items that may come into contact with treated surface. An analytical method is available to analyze the use dilution that is applied to food contact surfaces. A titration method is used to determine the total amount of quaternary compound. If the use solution is a mixture of ADBAC and didecyl dimethyl ammonium chloride (DDAC), then High Pressure Liquid Chromatogram–Ultraviolet Visible (HPLC-UV) is used to determine the amount of ADBAC. The amount of DDAC is determined by calculating the difference between the total amount of quaternary compounds and ADBAC.

B. Revisions to Petitioned-For Exemption

EPA has revised the exemption as proposed in the notice of filing. The petitioner proposed to amend the exemption for Quaternary Ammonium Compounds: N-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride by increasing the amount of quaternary chemicals that may be in end-use concentrations from 200 ppm to 400 ppm. There presently exists an exemption for Quaternary Ammonium Compounds: Alkyl (C_{12-18}) dimethyl benzyl ammonium chloride (CAS Reg. No. 8001–54–5) that limits the concentration of quaternary chemicals to 200 ppm; however, because the petitioner specifically sought an exemption for Quaternary Ammonium Compounds: N-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride (CAS Reg. No. 68424–85–1) with a limit for the concentration of quaternary chemicals at 400 ppm, EPA has not amended the existing exemptions but instead established a new exemption for Quaternary Ammonium Compounds: N-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride (CAS Reg. No. 68424–85–1).

V. Conclusion

Therefore, an exemption from the requirement of a tolerance under section 408 of FFDCA is established for residues of n-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride (CAS No. 68424–85–1), on food contact surfaces resulting from use as an antimicrobial pesticide formulation applied to food-contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils, provided that the end-use concentration of all quaternary chemicals in solution does not exceed 400 ppm of active quaternary compound.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the

Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Alkyl Dimethyl Benzyl Ammonium Chloride Quaternaries, Food Additives, Food-Contact Sanitizers Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 7, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.940 is amended by alphabetically adding a new entry in the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

(a) * * *

Pesticide Chemical	CAS Reg. No.	Limits
* *	*	* *
Quaternary Ammonium Compounds: n-alkyl (C_{12-18}) dimethyl benzyl ammonium chloride	68424–85–1	When ready for use, the end-use concentration of all quaternary chemicals in solution is not to exceed 400 ppm of active quaternary compound.
* *	*	* *

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[FR Doc. E8–19070 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XJ81

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 Greenland turbot total allowable catch (TAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 15, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Greenland turbot TAC in the Aleutian Islands subarea of the BSAI is 790 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and the allocation from the non-specified reserves (73 FR 40193, July 14, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2008 Greenland turbot TAC in the Aleutian Islands subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 540 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 14, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19280 Filed 8–15–08; 4:15 pm]

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Proposed Rules

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

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 214 and 215

[CIS No. 2432–07; Docket No. USCIS–2007–0058]

RIN 1615–AB67

Changes to Requirements Affecting H–2B Nonimmigrants and Their Employers

AGENCY: U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is proposing to amend its regulations affecting temporary non-agricultural workers within the H–2B nonimmigrant classification and their U.S. employers. This proposed rule would modify current limitations with respect to petitions for unnamed H–2B workers and the period of time that an H–2B worker must remain outside the United States before he or she would be eligible to seek certain nonimmigrant status again. In addition, to better ensure the integrity of the H–2B program, this rule proposes to: Require employer attestations; preclude the imposition of fees by employers on prospective H–2B workers; require reimbursement of fees paid by H–2B workers to recruiters; preclude the change of the employment start date after the grant of the temporary labor certification; eliminate the process whereby H–2B petitions may be approved notwithstanding the absence of a valid temporary labor certification; require employer notifications when H–2B workers fail to show up for work, are terminated, or abscond from the worksite; require certain H–2B workers departing the United States to participate in a temporary worker visa exit pilot program; delegate authority to enforce the terms of the H–2B petition to the Secretary of Labor (in the event the Department and the Department of Labor (DOL) work out a mutually agreeable delegation of enforcement authority from the Department to DOL); and bar nationals of countries consistently refusing or unreasonably delaying repatriation of their nationals from obtaining H–2B status. This rule also proposes to change the definition of ''temporary employment'' to recognize that such employment could last up to three years. This proposed rule would encourage and facilitate the lawful employment of eligible foreign temporary non-agricultural workers, while continuing to safeguard the rights of workers.

DATES: Written comments must be submitted on or before September 19, 2008, in order to be assured of consideration.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2007–0058, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2007–0058 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3008, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Hiroko Witherow, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and U.S. Customs and Border Protection (CBP) in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2007–0058 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background

U.S. employers in seasonal and certain other industries have, in the past, faced a shortage of U.S. workers who are able, willing, and qualified to fill temporary non-agricultural jobs, and who would be available at the time and place needed to perform the work. To meet this need, U.S. employers have turned to hiring foreign workers. One avenue open to such employers is to petition for foreign workers who qualify within the H–2B nonimmigrant classification. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 CFR 214.2(h)(1)(ii)(D) and (h)(6)(i). According to the DOL Employment and Training Administration, the top three occupations for which U.S. employers utilize the H–2B program are landscape laborers, housekeeping cleaners, and construction workers.

A. Description of H–2B Nonimmigrant Classification

The H–2B nonimmigrant classification applies to foreign workers coming to the United States temporarily to perform temporary, non-agricultural labor or services. INA sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 CFR 214.1(a)(2) (H–2B classification designation). Such workers may not displace U.S. workers who are capable of performing such

services or labor. 8 CFR 214.2(h)(6)(i). In addition, their employment may not adversely affect the wages and working conditions of U.S. workers. *Id.*

The total number of aliens who enter the United States pursuant to H–2B visas or who are accorded H–2B nonimmigrant status during either the first or last 6 months of a fiscal year is limited to 33,000, for a total of 66,000 for the entire fiscal year.[1] INA sec. 214(g)(1)(B) and (g)(10), 8 U.S.C. 1184(g)(1)(B) and (g)(10). During the past several fiscal years, the demand for new H–2B workers has exceeded these limits. Moreover, the H–2B cap for each half of the fiscal year has been reached progressively earlier in recent years and prospective employers are thus increasingly anxious about their ability to secure necessary H–2B workers each year.

A USCIS-approved Form I–129, ''Petition for Nonimmigrant Worker'' (hereinafter, ''H–2B petition'') is required before a foreign worker may seek H–2B nonimmigrant status. 8 CFR 214.2(h)(2)(i)(A). Depending on the circumstances, the petitioner must be a U.S. employer, a U.S. agent, or a foreign employer filing through a U.S. agent. 8 CFR 214.2(h)(6)(iii)(B). With a limited exception, an employer currently may not file a petition for an H–2B temporary worker unless that employer has obtained a temporary labor certification from the Secretary of Labor (or the Governor of Guam for employment on Guam). 8 CFR 214.2(h)(6)(iv)(A) and (h)(6)(v)(A). To obtain a temporary labor certification, a prospective employer must test the U.S. labor market as to the availability of qualified U.S. workers and be willing to pay the alien a salary that will not adversely affect the wages and working conditions of similarly employed U.S. workers. 20 CFR 655.3(a); 8 CFR 214.2(h)(6)(iv)(A)(1). Based on the labor certification, the H–2B petitioner files the H–2B petition with the appropriate USCIS service center. *See* 8 CFR 214.2(h)(2)(i)(A). If, however, the petitioner receives notice from the Secretary of Labor that the certification cannot be made (referred to as a ''Non Determination Notice''), the petitioner nevertheless may file the H–2B petition with USCIS, but must include countervailing evidence to overcome the lack of such certification. 8 CFR 214.2(h)(6)(iv)(D).

Under current regulations, an H–2B petitioner must, at the time of filing, include in its petition the names of all beneficiaries, except in emergent situations involving multiple beneficiaries. *See* 8 CFR 214.2(h)(2)(iii). The H–2B petition also must include documentation that each beneficiary qualifies for the job offer as specified in the labor certification, where such job requires any education, training, experience, or other special requirements. 8 CFR 214.2(h)(6)(vi)(C).

The H–2B petition must establish that the petitioner's need for the services or labor is temporary, regardless of whether the underlying job is permanent or temporary. 8 CFR 214.2(h)(6)(ii). The petitioner's need is considered temporary if it is a one-time occurrence, a seasonal need, a peak-load need, or an intermittent need. 8 CFR 214.2(h)(6)(ii)(B). One-time occurrence employment is where the employer has not employed workers to perform the services in the past and will not need workers to perform the services in the future, or where the employer has an employment situation that is otherwise permanent but a temporary event of short duration has created the need for a temporary worker. 8 CFR 214.2(h)(6)(ii)(B)(1). Employment of a seasonal nature is recurring employment that is tied to a certain time of year by a predictable event or pattern and requires labor levels far above those necessary for ongoing operations. 8 CFR 214.2(h)(6)(ii)(B)(2). Employment involving a peak-load need is where the employer regularly employs permanent workers to perform the services or labor at the place of employment and the employer needs to supplement the permanent staff on a temporary basis tied to a seasonal or short-term demand. 8 CFR 214.2(h)(6)(ii)(B)(3). Such temporary peak-load additions to staff may not become a part of the petitioner's regular operation. *Id.* Intermittent need is where an employer has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform the services or labor for short periods. 8 CFR 214.2(h)(6)(ii)(B)(4).

As a general rule, the period of the petitioner's need must be less than one year, absent extraordinary circumstances. 8 CFR 214.2(h)(6)(ii)(B). With certain exceptions for commuters and workers who do not reside continually in the United States and whose employment is seasonal, intermittent or for six months or less per year, an H–2B nonimmigrant may hold H–2B nonimmigrant status for a maximum period of three years, following which he or she must depart from the United States for at least six months before he or she may again be admitted in H–2B or any other status under section 101(a)(15)(H) or (L) of the INA. 8 CFR 214.2(h)(13)(iv) and (v).

B. Effective Use of H–2B Nonimmigrant Classification

The H–2B program is most intensively used among businesses in seasonal industries that frequently have a difficult time locating temporary workers. USCIS is aware, however, that the current H–2B program regulations do not accommodate as effectively as possible the needs of U.S. employers and alien workers who use, or want to use, the H–2B program. Therefore, USCIS is proposing a number of significant changes to the H–2B regulations to reduce or eliminate burdens and restrictions that hinder employers' ability to effectively use this visa category. In addition, USCIS proposes to enhance the protection of H–2B workers by curtailing abuses related to employment fees and visa selling that could lead to human trafficking and alien worker indenture. Additionally, worker protections are enhanced through strengthened revocation and debarment procedures and employer sanctions for a substantial or willful failure to meet the terms of the attestations.

III. Proposed Regulatory Changes

A. Allowing Unnamed Beneficiaries

USCIS is proposing to amend 8 CFR 214.2(h)(2)(iii) to allow employers petitioning for aliens to fill H–2B positions to specify only the number of positions sought and not name the individual alien(s), except where the alien is already present in the United States. The H–2B program is overseen by three Federal government agencies: The Department of Labor (DOL) issues the H–2B temporary labor certifications and oversees compliance with employment laws; USCIS adjudicates the H–2B petitions; and, if the petitions are approved, the Department of State issues the H–2B visas to the workers at consulates overseas. In the event that the Department and DOL work out a mutually agreeable delegation of authority from DHS to DOL, enforcement of the terms of the petition will be the responsibility of DOL. As this entire process, from temporary labor certification to issuance of an H–2B visa, can take up to several months, many H–2B employers often start the temporary labor certification and

[1] Section 214(g)(9)(A) of the INA provided that an alien who has already been counted toward the numerical limitation during fiscal year 2004, 2005, or 2006 shall not again be counted toward such limitation during fiscal year 2007. The provision sunset on September 30, 2007. National Defense Authorization Act, sec. 1074, Public Law No. 109–364 (Oct. 17, 2006).

petitioning processes several months ahead of the actual date of stated employment need. Having to name beneficiaries that far in advance increases the likelihood that those beneficiaries may ultimately be unavailable to fill the positions. By eliminating the requirement to name beneficiaries outside of the United States on the petition, USCIS believes that H–2B employers would have more flexibility to recruit foreign workers who are actually interested in and available on the date of stated need. Conforming amendments have been made to proposed 8 CFR 214.2(h)(6)(vi)(C).

B. Post-H–2B Waiting Period

Once an H–2B worker has reached the three-year ceiling on H–2B nonimmigrant status, current regulations require the worker to wait six months outside the United States immediately prior to filing for an extension, change of status, or readmission to the United States in H–2B status or other status under section 101(a)(15)(H) or (L) of the INA. 8 CFR 214.2(h)(13)(iv). This rule proposes to reduce the required absence period to three months. This would reduce the amount of time employers would be required to be without the services of needed workers while not offending the fundamental temporary nature of employment under the H–2B program.

C. Prohibiting H–2B Petitions or Admissions for Nationals of Countries That Consistently Refuse or Delay Repatriation

An alien worker who violates his or her status may be subject to administrative proceedings before an immigration judge to remove the alien from the United States. *See* INA sections 237(a)(1)(C), 239(a), 240(a); 8 U.S.C. 1227(a)(1)(C), 1229(a), 1229a(a). A removal order typically includes the name of the country to which the alien is to be removed, which usually is the alien's country of nationality. In order to effectuate the removal order, DHS must ensure that the alien has the necessary travel documents (e.g., passport) to return to the named country and that the country agrees to receive the alien. DHS has faced an ongoing problem of countries refusing to accept or unreasonably delaying the acceptance of their nationals who have been ordered removed. To combat this problem, Congress gave the Secretary of State the authority to discontinue the issuance of visas to citizens, subjects, nationals, and residents of a country upon notification by the Secretary of Homeland Security that the government of that country refuses to accept their return. INA sec. 243(d), 8 U.S.C. 1253(d); *see also* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) sec. 307, Pub. L. No. 104–208, 110 Stat. 3456 (September 30, 1996).

In an effort to further address this problem, this rule proposes to preclude USCIS from approving a petition filed on behalf of one or more aliens from countries that the Secretary of Homeland Security has found to have consistently refused to accept or unreasonably delayed the prompt return of their citizens, subjects, nationals or residents. *See* proposed 8 CFR 214.2(h)(6)(i)(D); *see also* INA secs. 214(a)(1), 215(a)(1) and 243(d). The Secretary will periodically review determinations that countries have consistently refused to accept or unreasonably delayed accepting their nationals to ensure that the determinations are still justified. These provisions are intended to encourage more nations to promptly accept the return of nationals subject to a final order of removal.

DHS expects that the proposals in this rule will increase the flexibility and attractiveness of the H–2B visa program, together with the modernizing proposals the DOL is making in its H–2B rule. DHS hereby invites comments from the public on additional or alternative approaches to the repatriation problem described above, such as restricting eligibility to nationals of countries that provide the most cooperation to the United States in administering the program, rather than excluding those whose governments provide the least cooperation. DHS is particularly interested in additional ways to promote cooperation by foreign governments in matters of security, particularly in connection with travel and immigration, such as the country's willingness to share passport information and criminal records of aliens who are seeking admission to, or are present in, the United States under this program.

D. Temporary Labor Certifications

1. Consideration of Petitions Lacking an Approved Temporary Labor Certification

Upon proper application by a prospective employer, a temporary labor certification is granted if the Secretary of Labor or the Governor of Guam (for employment on Guam) determines that the H–2B non-agricultural temporary worker will not displace U.S. workers and the H–2B employment will not adversely affect the wages and the working conditions of U.S. workers. Currently, if a petitioner receives a notice from the Secretary of Labor or the Governor of Guam that certification cannot be made, a petition containing countervailing evidence to overcome this lack of certification may be filed with USCIS. 8 CFR 214.2(h)(6)(iv)(D), (E), (h)(6)(v)(C), (D). In any case where USCIS decides that approval of the H–2B petition is warranted despite the issuance of a Non-Determination Notice by the Secretary of Labor or the Governor of Guam, the approval must be certified by the USCIS Administrative Appeals Office (AAO) pursuant to 8 CFR 103.4. 8 CFR 214.2(h)(9)(iii)(B)(2)(ii).

It is the view of DHS that, when the Secretary of Labor or the Governor of Guam decides that she cannot make such a labor certification determination, it would not be appropriate for USCIS to review that decision by adjudicating a petition that lacks an approved temporary labor certification. Thus, this rule proposes to eliminate USCIS's current authority to adjudicate H–2B petitions where the Secretary of Labor or the Governor of Guam has not granted a temporary labor certification. Under this proposed rule, an H–2B petition may not be filed with USCIS unless the Secretary of Labor or the Governor of Guam has granted a temporary labor certification. Accordingly, this rule proposes to make conforming amendments to 8 CFR 214.2(h)(1)(ii)(D), (h)(6)(iii)(C), (h)(6)(iii)(E), (h)(6)(iv)(A), (h)(6)(iv)(D), (h)(6)(iv)(E), (h)(6)(v)(A), (h)(6)(v)(A)(*2*), (h)(6)(v)(C), (h)(6)(v)(D), (h)(6)(vi)(A), (h)(6)(vi)(B), and (h)(9)(iii)(B)(2) to reflect elimination of this current practice.

2. Employment Start Date

At present, USCIS allows employers to file a Form I–129 with a start date that is later than what is stated on the approved temporary labor certification, as long as the requested employment period on the petition is within the validity period of the approved temporary labor certification. This rule proposes to preclude this practice, as the unintended consequences of this policy are that it unfairly benefits employers with longer seasonal or temporary employment windows, invalidates the labor market test certified by DOL in the approved application for labor certification, and can be easily exploited by certain employers to gain an advantage in obtaining H–2B visas from the limited pool of 66,000 available each fiscal year. Under this proposed rule, petitioners, with a limited exception discussed below, would not be able to request an employment start date on Form I–129

that is different than the date of employment need listed on the accompanying approved temporary labor certification. Proposed 8 CFR 214.2(h)(6)(iv)(D).

USCIS has determined that the current practice of allowing employers to file a Form I–129 with a start date that is later than what is stated on the temporary labor certification unfairly benefits employers with longer seasonal or temporary employment windows as they have the advantage of being able to file petitions before other employers with a shorter timeframe. An employer may, for example, submit a labor certification application requesting workers from January 1 to October 31; this labor certification could be filed as early as September 1 of the previous year, because the application for labor certification may be submitted to DOL as early as 120 days prior to the stated date of need. However, if the 33,000 cap for the first half of that fiscal year (i.e., October 1–March 31) is reached before the employer has an opportunity to file a petition with USCIS (note that the cap for the first half of FY08 was reached on September 27, 2007), the earliest time when this employer will be able to receive H–2B workers is April, when an additional new 33,000 H–2B visas become available. Upon receipt of the approved labor certification for the employment from January 1 to October 31, the employer may currently file a Form I–129 petition with USCIS indicating that it will need a workforce from April 1 to October 31 in order to receive the necessary H–2B visa numbers allocated for the second half of the fiscal year. However, submission of a petition with a start date later than the start date of stated need on the approved labor certification in such a circumstance, and thus potentially receiving workers for at least the latter part of the employer's period of need, may currently only be undertaken by employers with a lengthy, multiple-month need for temporary workers. Employers in industries whose need for workers arises only during a very brief seasonal period or for any shorter period of time during the spring or summer cannot take advantage of this because their period of need is too short to allow them the same flexibility in shifting employment start dates. While such employers with shorter periods of need must wait until later to apply for a labor certification, employers with longer periods of need, as in the example above, are able to get a head start in requesting H–2B visas from the second half of the fiscal year. This does not ensure a fair and equitable distribution of the H–2B visa numbers among all H–2B employers throughout the year.

Furthermore, an appropriate labor market test must be conducted prior to the determination by the Secretary of Labor as to whether there are any U.S. workers available and capable of performing the temporary services or labor and whether the H–2B employment will adversely affect the wages and working conditions of U.S. workers. According to DOL, the labor market test will be invalidated if the employer changes the employment start date after the temporary labor certification is granted (e.g., due to qualified U.S. worker unavailability on the start date provided on the labor certification application). USCIS agrees with DOL on this issue.

The H–2B classification is defined to include nonimmigrant foreign workers who perform non-agricultural temporary services or labor if United States workers who are capable of performing such services or labor cannot be found. INA sec. 101(a)(15)(H)(ii)(B), 8 U.S.C. 1101(a)(15)(H)(ii)(b). The effect of a grant of a labor certification is to certify that qualified workers in the United States are not available ''at the time and place needed to perform the work'' for which H–2B workers are being requested and that the H–2B employment will not adversely affect the wages and working conditions of similarly employed United States workers. See 20 CFR 655.3(b). As the availability of temporary U.S. workers could change over short periods of time, the result of the labor market test could be different if the employment start date is changed after a labor certification is approved. Therefore, the grant of the H–2B status based on a petition which contains a later employment start date than what was stated on the approved labor certification could have the practical effect of precluding otherwise available United States workers from filling the position in question, which is in violation of the statute.

Allowing employers to file a Form I–129 with a date that is later than what is stated on the temporary labor certification, as long as the employment period is within the validity period of the approved temporary labor certification, also can be easily exploited by employers whose period of need is actually shorter than the period stated in the labor certification application, but who state a longer need in order to move up the date on which they can file their H–2B petition. Given how quickly the H–2B cap for each half of the fiscal year has been reached in recent years (e.g., in FY 2008, the cap for the second half of the fiscal year was reached on January 2, 2008), the earlier an employer can file its petition the better are its chances of getting H–2B visas for its workers.

In order to ensure a fair and equitable distribution of the 33,000 H–2B visa numbers becoming available each half fiscal year, this rule proposes to generally preclude a change of the requested employment start date on a Form I–129 from the date of employment need listed on the accompanying temporary labor certification. See proposed 8 CFR 214.2(h)(6)(iv)(D). With the one limited exception stated below, if an employer has a reason to change the requested employment start date after a temporary labor certification was previously granted, it must obtain a new temporary labor certification with the new employment start date prior to filing a Form I–129 petition with USCIS. *Id.*

The exception to this prohibition on petitioners' requesting an employment start date on Form I–129 that is different than the date on the accompanying approved temporary labor certification would apply when an amended H–2B petition, accompanied by the previously approved temporary labor certification and a copy of the original petition approval notice, is filed at a later date due to the unavailability of the originally requested number of workers. The proposed rule would permit the amended H–2B petition securing the remaining number of workers that was originally approved in the labor certification to state an employment start date that is later than what is stated in the accompanying temporary labor certification. See Section L—Substitution of Beneficiaries and proposed 8 CFR 214.2(h)(6)(viii).

E. Payment of Fees by Beneficiaries To Obtain H–2B Employment

1. Grounds for denial or revocation on notice

USCIS has found that certain labor recruiters and U.S. employers are charging potential H–2B workers job placement fees in order to obtain H–2B employment. Such workers are coming to the United States to fill positions that U.S. workers are unwilling or unable to fill and are frequently doing so in order to improve their own difficult economic circumstances at home. USCIS has learned that payment by these workers of job placement-related fees not only results in further economic hardship for them, but also, in some instances, has resulted in their effective indenture. In an effort to protect H–2B workers from such abuses, this rule proposes to provide USCIS with the authority to

deny or revoke upon notice any H–2B petition if it determines that the petitioner knows or reasonably should know that the alien beneficiary has paid or has agreed to pay any fee or other form of compensation, whether directly or indirectly, to the petitioner or the petitioner's agent, or to any facilitator, recruiter, or similar employment service, in connection with obtaining the H–2B employment. *See* proposed 8 CFR 214.2(h)(6)(i)(B); *see also* 8 CFR 214.2(h)(11)(iii)(A)(5) (revocation on notice). To further ensure that an alien in such a situation has not improperly incurred any expenses or debt in connection with obtaining employment in the United States under the H–2B program, the rule also proposes that an H–2B petitioner be required to demonstrate, as a precondition to approval of any subsequent H–2B petition, that it has reimbursed the alien beneficiary in full for any such fees or other form of compensation (other than those for which the petitioner may be reimbursed, as described in proposed 8 CFR 214.2(h)(6)(i)(B)(3)). Those fees or other form of compensation also include those paid to the petitioner, an agent, facilitator, or similar employment service whether directly or indirectly, in connection with obtaining H–2B employment, whether or not such alien has opted to seek H–2B employment with another employer, as permitted under proposed 8 CFR 214.2(h)(6)(i)(B). For instance, the petitioner may submit a copy of the financial transaction record or a receipt signed by the beneficiary as evidence of reimbursement.

An H–2B employer will be subject to these provisions if it knows or reasonably should know that its H–2B employees have been charged a fee by anyone (other than those fees for which the petitioner may be reimbursed, as described in proposed 8 CFR 214.2(h)(6)(i)(B)(3)) related to their placement as an H–2B worker with the employer. For example, a recruiter advertises on the Internet or through other means to prospective H–2B employers that it can place temporary alien workers with such employers at no or minimal cost to the prospective employers. In such a case, if there is evidence that the prospective employer knew or reasonably should have known about the advertisement, it is reasonable to expect it to question the recruiter generally as to how it is able to provide such free services, and in particular, whether the alien workers it finds have been or will be charged any direct or indirect fee in connection with such placement. Failure to make such reasonable inquiries will not relieve the employer of its obligations under these provisions. Similarly, if an H–2B employer learns, directly or indirectly, that a prospective H–2B worker has been asked to pay a fee or other thing of value to a recruiter/facilitator or other downstream party in connection with his/her employment with the U.S. employer then the H–2B employer, in such a situation, will be deemed to be on notice that its prospective employees have been or may be asked to pay a job placement related fee by this recruiter/facilitator or other downstream party, and can be expected to take reasonable steps to ascertain whether this is in fact true.

USCIS believes that this proposal will help minimize immigration fraud and protect against other abuses that have occurred when such aliens have been required to pay such employment fees, including petition padding (i.e., the filing of requests for more workers than needed), visa selling, and human trafficking. While this proposal would provide necessary protections against the alien worker's indenture, this proposal would not preclude the payment of any finder's or similar fee by the prospective employer to a recruiter or similar service, provided that such payment is not assessed directly or indirectly against the alien worker. Further, this reimbursement requirement would not apply to the actual cost of transportation to the United States, or payment of any government-specified fees required of persons seeking to travel to the United States, such as those required by a foreign government for issuance of passports and by the U.S. Department of State for issuance of visas, provided that any such costs incurred be the lower of the fair market value or the actual cost of the service (unless the prospective employer has agreed with the alien to pay such fees and/or transportation costs). The prospective employer would be responsible, however, for the payment of any related indirect fees, attorneys' fees, travel agent fees, and fees for assistance to prepare visa application forms.

To provide protection to H–2B workers who are in the United States based upon an approved petition that is later revoked pursuant to proposed 8 CFR 214.2(h)(6)(i)(B), this rule proposes a thirty-day grace period during which time such workers may apply for an extension of stay, depart the United States, or find new employment. During the thirty-day period, such workers, if they do not otherwise violate the terms and conditions of their nonimmigrant admission in H–2B classification, would not be unlawfully present in the United States, but, instead, would be in an authorized period of stay. *See* INA sec. 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B). This proposed rule, therefore, would prevent such persons from accruing a period of ''unlawful presence'' that might otherwise subject such persons to the statutory bar on admissibility under that section of the INA.

Further, to minimize the costs to H–2B workers who are affected by the revocation of a petition pursuant to proposed 8 CFR 214.2(h)(6)(i)(B), this rule also proposes to require employers who know or reasonably should know the payment by the beneficiary of any such job placement or related fees (other than those for which the petitioner may be reimbursed, as described in 8 CFR 214.2(h)(6)(i)(B)(3)), to pay such workers' reasonable transportation expenses to return to their last place of foreign residence, and, as described above, to reimburse the alien for any fees or other compensation of which the employer knew or reasonably should have known (other than, in certain cases, transportation costs and any government-mandated passport, visa and inspection fees) paid in connection with obtaining H–2B employment with the petitioner. Proposed 8 CFR 214.2(h)(6)(i)(B).

2. Employer Attestation

USCIS recognizes that some H–2B petitioners, particularly those petitioning for the first time and without the benefit of counsel, may not appreciate the limitations on H–2B employment imposed by the regulations or by the representations in the H–2B petition and the accompanying application for temporary labor certification. This rule proposes to require H–2B petitioners to include with their petitions an attestation, certified as true and accurate by the petitioner and signed under penalty of perjury, that during the period of intended employment for which the petition is approved, the petitioner will not materially change the information provided on the Form I–129 and the temporary labor certification, including, but not limited to, the alien workers' duties, place of employment, nor the entities for which the duties will be performed. Proposed 8 CFR 214.2(h)(6)(i)(C). USCIS believes that this requirement will apprise petitioners of their responsibilities and obligations, and, at the same time, help prevent the employment of H–2B alien workers in a manner that conflicts with the representations upon which approval of the petition is based. In the event that a material change does occur in the

terms and conditions of employment specified in the original petition, petitioners are currently obligated to file a new petition under 8 CFR 214.2(h)(2)(i)(E).

As an anti-fraud and worker protection measure to complement the proposed changes to 8 CFR 214.2(h)(6)(i)(B), USCIS is further proposing in 8 CFR 214.2(h)(6)(i)(C)(2) that the petitioning employer also include in its attestation a statement that it has not received, nor intends to receive, any fee, compensation, or any other form of remuneration from the workers it intends to hire or from any person, agency or other entity in connection with H–2B employment. The petitioner would also be required to attest to whether it has used a facilitator, recruiter, or any other similar employment service to locate foreign workers to fill the positions covered by the H–2B petition, and if so, to provide the names of such facilitators, recruiters, or placement services and whether it believes, to the best of its knowledge, that any fees were paid or asked of its H–2B workers by such third parties. Finally, the petitioner would be required to attest to whether USCIS has previously determined that the H–2B petitioner knew, or reasonably should have known that any fee, compensation, or other form of remuneration has been collected, directly or indirectly, in connection with the filing by the petitioner of any previous H–2B petition on behalf of an alien, and if so, whether the petitioner has reimbursed that alien in full for any such fees, compensation, or other remuneration (other than, in certain cases described above, certain government-mandated passport, visa and inspection fees and/or transportation costs).

F. Denial of Petition and Revocation of Approval of Petition

USCIS is proposing to revise 8 CFR 214.2(h)(10)(ii) and 8 CFR 214.2(h)(11)(iii)(A)(*2*) to clarify USCIS' authority to issue a notice of denial or revocation of a Form I–129 if USCIS determines that the statements on the Form I–129 petition or application for labor certification are inaccurate, fraudulent, or misrepresented a material fact.

G. Employer Notifications to DHS of H–2B No-Show, Termination, or Abscondment

USCIS also proposes to add 8 CFR 214.2(h)(6)(i)(E) to require petitioners to provide notification to DHS within 48 hours in the following instances: an H–2B worker fails to report to work within five days of the date of the employment start date on the H–2B petition or within five days of the start date established by his or her employer, whichever is later; the non-agricultural labor or services for which H–2B workers were hired is completed more than 30 days early; or an H–2B worker absconds from the worksite or is terminated prior to the completion of non-agricultural labor or services for which he or she was hired. This proposal would ensure that an approved H–2B petition filed by an employer is closed out when the basis for the alien's status terminates and that USCIS is made aware of the change in employment status. The rule also proposes that the petitioner notify DHS beginning on a date and in a manner specified via notice published in the **Federal Register**.

To enforce the notification provision, the rule proposes to require employers to retain evidence (e.g., a photocopy) of the notification for a one-year period. *See* proposed 8 CFR 214.2(h)(6)(i)(E). Additionally, the rule proposes to add a provision setting forth the circumstances in which an H–2B worker may be found to be an absconder, thus defining a term that would otherwise vary in interpretation from one employer to the next, possibly to the detriment of the alien worker. *See* proposed 8 CFR 214.2(h)(6)(i)(E). The definition employs the same five-day period used to trigger a notification requirement when the alien does not report to work at the beginning of the petition period.

H. Violations of H–2B Status

Currently, the regulations governing the H–2A classification include a provision regarding the consequences to aliens for violating H–2A status. *See* 8 CFR 214.2(h)(5)(viii)(A). The regulations governing the H–2B classification do not contain such a provision. USCIS has determined that there is no reason for this disparity. In order to further the integrity of the H–2B program, DHS is proposing to add a new provision in the H–2B regulations at 8 CFR 214.2(h)(6)(ix) that would preclude a new grant of H–2B status where the alien worker violated the conditions of H–2B status, other than through no fault of his or her own, within the five years prior to adjudication of the new H–2B petition by USCIS.

I. Temporary Worker Visa Exit Program Pilot

The Secretary of Homeland Security is authorized to prescribe conditions for the admission of nonimmigrant aliens under section 214 of the INA. Section 235 of the INA provides for the inspection of applicants for admission. Pursuant to 8 CFR 235.1(h)(1), nonimmigrant aliens who are admitted to the United States, unless otherwise exempt, are issued Form I–94, ''Arrival/Departure Record,'' as evidence of the terms of admission. Once admitted into the United States, nonimmigrant aliens are required to comply with all the conditions of their stay, depart the United States before the expiration of the period of authorized stay, and surrender the departure portion of the Form I–94 upon departure from the United States. Section 215 of the INA provides the authority for departure control for any person departing from the United States. Additionally, 8 CFR part 215 provides the regulations for controls of aliens departing from the United States. Specifically, 8 CFR 215.2(a) allows for DHS, at its discretion, to require any alien departing from the United States to be examined under oath and to submit for official inspection all documents in the alien's possession.

Available statistics indicate that a significant number of nonimmigrant aliens either do not turn in their Form I–94 upon departure or overstay his or her authorized period of stay. DHS intends to strengthen its departure control recordkeeping system. On August 10, 2007, the Administration announced that it would establish a new land-border exit system for guest workers, starting on a pilot basis.

In order to ensure that temporary agricultural workers depart the United States within the authorized period, on February 13, 2008, DHS published a notice of proposed rulemaking to amend its regulations regarding the H–2A nonimmigrant classification, in which it proposed to institute a temporary worker visa exit pilot program and to require certain H–2A temporary agricultural workers to participate in this program. 73 FR 8230. Under the proposed program, an H–2A alien admitted at a port of entry participating in the program must also depart through a port of entry participating in the program and present designated biographic and/or biometric information upon departure at the conclusion of their authorized period of stay.

This rule proposes to expand this temporary worker visa exit pilot program to the H–2B classification by requiring an H–2B alien admitted at a port of entry participating in the program to depart through a port of entry participating in the program and to present designated biographic and/or biometric information upon departure at the conclusion of the authorized period of stay. CBP would publish a Notice in the **Federal Register** designating which

temporary workers must participate in the program, which ports of entry are participating in the program, which biographic and/or biometric information would be required, and the format for submission of that information by the departing designated temporary workers. The pilot program exit system would ensure that the designated temporary workers depart when their period of authorized stay expires and would provide a foundation for the comprehensive land border exit system for guest workers proposed by the Administration in August 2007. DHS requests comments on the establishment of the proposed pilot program.

DHS previously conducted exit pilot programs at selected air and sea ports of entry through the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program. *See* 69 FR 46556. Those pilots began in August 2004 and concluded in May 2007. US–VISIT also conducted a limited pilot program at selected land borders to test radio frequency technology. *See* 70 FR 44934. That pilot did not collect information from aliens departing the United States.

The pilot program exit system proposed under this rule will utilize any applicable lessons learned from the US–VISIT pilot programs. DHS will continue to coordinate these screening programs to ensure both security and efficiency of the programs.

J. Temporary Need

Under current regulations the period of a petitioner's need for H–2B workers ''must be a year or less although there may be extraordinary circumstances where the temporary services or labor might last longer than one year.'' 8 CFR 214.2(h)(6)(ii)(B). USCIS has determined that the general one-year limit contained in the current definition of a petitioner's temporary need for the services or labor performed by an H–2B alien, coupled with the ''extraordinary circumstances'' restriction on periods of need lasting longer than a year, is unnecessarily limiting on the employment opportunities that may otherwise qualify for H–2B classification. *See* 8 CFR 214.2(h)(6)(ii)(B). This rule therefore proposes to amend the current definition of ''temporary services or labor.'' Under the proposed rule, a job would be defined to be temporary where the employer needs a worker to fill the job for a limited period of time. The term ''limited period of time'' is in turn defined as a period of need that will end in the near, definable future. As under the current regulations, USCIS would generally consider a period of temporary need to be limited to one year or less, but the proposed rule eliminates the ''extraordinary circumstances'' restriction on periods longer than a year and explicitly provides that such a period could last up to three years.

USCIS is proposing this change because there are some employers who may need temporary workers for a specific project, such as the construction of a specific building, structure (e.g., bridge, power plant) or other development, which will have a definable end point but may require more than one year to complete. Under this proposal, an employer's need for the duties to be performed by H–2B workers can be considered temporary if it is a one-time occurrence and does not exceed three years. An employer with a multiple-year need is, however, required to retest the labor market annually and obtain a temporary labor certification annually. This contrasts with the nature of temporary work in the agricultural sector performed under the H–2A visa program, which generally is seasonal. USCIS believes that a more flexible rule that generally limits temporary work to one year but explicitly allows it to last up to three years better comports with the nature of temporary work in the H–2B context but is not at this time necessary in the H–2A context.

This rule also proposes to make a conforming amendment to 8 CFR 214.2(h)(9)(iii)(B)(*1*).

K. Interruptions in Accrual Towards 3-Year Maximum Period of Stay

An alien's total period of stay in H–2B nonimmigrant status may not exceed three years. 8 CFR 214.2(h)(15)(ii)(C). In H–2A nonimmigrant status, there are certain periods of time spent outside the United States that are deemed to ''stop the clock'' towards the accrual of the three-year limit. 8 CFR 214.2(h)(5)(viii)(C). USCIS has determined to apply the same standard to H–2B nonimmigrant status. This will also clarify what constitutes continuous presence in H–2B nonimmigrant status. *See* proposed 8 CFR 214.2(h)(13)(i)(B) and (h)(13)(v).

L. Substitution of Beneficiaries

USCIS understands that there are instances when an employer is not successful in finding and/or bringing from abroad the intended number of workers, as approved on the temporary labor certification and the Form I–129. In a continued and subsequent effort to fill vacant positions, an employer may be able to find workers it could hire who are currently legally in the United States. USCIS' current regulations regarding the substitution of H–2B beneficiaries do not provide a process for an employer to substitute beneficiaries with aliens who are currently in the United States. 8 CFR 214.2(h)(2)(iv). This rule proposes to re-designate this paragraph as paragraph (h)(6)(viii) and provides a clarified process based on possible situations that an H–2B employer may encounter. *See* proposed 8 CFR 214.2(h)(6)(viii).

M. Employer Sanctions

Section 214(c)(14)(A)(i) of the INA provides DHS with the authority to impose certain administrative remedies (including civil monetary penalties) as it deems appropriate if DHS finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the H–2B petition or a willful misrepresentation of a material fact in such petition. Section 214(c)(14)(A)(ii) of the INA, in turn, provides DHS with the authority to deny petitions filed with respect to an offending employer under section 204 or 214(c)(1) of the INA during a period of at least one year, but not more than five years, if DHS finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the H–2B petition or a willful misrepresentation of a material fact in such petition. Under this provision, petitions for workers in the H (except for H–1B1), L, O and P–1 nonimmigrant visa classifications may be barred. *See* INA sec. 214(c)(1), 8 U.S.C. 1184(c)(1).

DHS interprets section 214(c)(14)(B) of the INA, in conjunction with 214(c)(14)(A) of the INA, to permit DHS to delegate to DOL the authority to make such a finding and impose the administrative remedies authorized by section 214(c)(14)(i) of the INA. DHS is currently in discussions with DOL concerning whether to delegate authority to DOL to establish an enforcement process to investigate employers' compliance with H–2B requirements, including new requirements in proposed 8 CFR 214.2(h)(6)(i)(B) and (C), and to seek remedies for violations disclosed by any resulting investigations. This proposed rule describes potential immigrant and nonimmigrant petition debarment procedures USCIS could institute in the event that DHS and DOL reach a mutually agreeable delegation of enforcement authority from DHS to DOL. *See* proposed 8 CFR 204.5(o) and 8 CFR 214.1(k).

USCIS seeks comment on other means to encourage employer compliance with the terms and conditions of petitions to DHS as well as filings with other governmental agencies.

N. Miscellaneous Changes

USCIS is proposing to amend 8 CFR 214.2(h)(6)(iii)(B), 214.2(h)(6)(v)(E)(2)(iii), and 214.2(h)(6)(vii) to correct typographical errors. USCIS is also proposing to amend 8 CFR 214.2(h)(8)(ii)(A) to codify the current numerical counting procedures for the H–2B classification.

IV. Rulemaking Requirements

A. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

C. Executive Order 12866

This rule has been designated as significant under Executive Order 12866. Thus, under section 6(a)(3)(C) of the Executive Order, USCIS is required to prepare an assessment of the benefits and costs anticipated to occur as a result of this regulatory action. A complete analysis of the costs and benefits of this rule is available in the docket for this rule at *www.regulations.gov* in rulemaking Docket No. USCIS–2007–0058. The impacts of the changes proposed in this rule are summarized as follows:

• *Filing volumes.* The number of petitions filed by H–2B employers is expected to increase, but the annual volume of petitions processed will not change because the maximum number of available visas will not change, absent action from Congress. Therefore, the increased volume will result in more petitions being returned without depositing their fee payment or reviewing the petition.

• *Decreased processing times.* The average USCIS processing time for an H–2B petition of around 60 days will decrease as a result of petitioners not being required to name the individual alien on initial H–2B petitions. USCIS will not have to perform an Interagency Border Inspection System (IBIS) name check, removing the largest source of delays in the processing of H–2B petitions.

• *Increased flexibility for longer-term projects.* By eliminating the ''extraordinary circumstances'' restriction on periods longer than a year and explicitly providing that such a period could last up to three years, this proposed rule would benefit employers who need workers for a specific project that will take longer than one year to complete.

• *No effect on labor pool.* Because of the statutory maximum on the annual number of H–2B visas available, this rule will result in no increase in the availability of temporary seasonal workers. There may be some slight benefit from helping employers fill jobs and find workers more efficiently, but businesses will still be constrained by a limited labor supply.

• *More attractive program.* The administrative improvements proposed in this rule are intended to make employers more likely to participate in the program. This may cause some employers who currently hire seasonal workers who are not properly authorized to seek to replace those workers with lawful workers.

• *Better control and monitoring of employees.* By requiring an employer to notify USCIS quickly after the employer terminates an alien's employment, immigration authorities will have better information regarding the presence in the U.S. of an alien without legal immigration status to determine his or her whereabouts for enforcement measures.

• *No changes in fee collections.* Only those H–2B petitions received before the maximum annual number of H–2B visas is reached are adjudicated and the fee check deposited. Petitions not received before the maximum annual number is reached are rejected. Because the total number of H–2B visas available per year will not increase and the total number of workers requested already greatly exceeds the number of H–2B visas available, fees will not increase because there will be no increase in Form I–129 filings that are processed.

• *Increase in petitions filed.* The administrative improvements proposed by this rule are expected to result in more petitions for H–2B workers being submitted to USCIS. Therefore, the aggregate burden imposed on the public may increase in relation to the additional respondents who will file a Form I–129 as a result of this rule's proposed changes. However, since the total number of workers requested already greatly exceeds the number of H–2B visas available, more petitions will not be processed and/or approved.

• *Repatriation provision effects will be slight.* This rule proposes to prohibit approval of an H–2B petition for a worker from a country that consistently denies or unreasonably delays repatriation of its citizen, subjects, nationals, or residents. The current impact of this proposed change is expected to be negligible, since very few H–2B workers are from countries DHS believes may see an impact from this provision. In addition, since the total number of workers requested exceeds the number of H–2B visas available, such impacts as may occur would represent transfers from one country's workers to another.

• *Costs of exit registration requirement is low.* Under the proposed rule, certain aliens admitted on H–2B visas must comply with the DHS Biometric Exit Pilot. An alien admitted at a port of entry participating in the program must depart through a port of entry participating in the program and present designated biographic and or biometric information upon departure at the conclusion of their authorized period of stay. The annual undiscounted costs of the time for H–2B employees to exit as required under this rule is estimated to be around $136,500.

• *Restrictions on recruitment or placement fees—added compliance costs to petitioning firms.* Petitioners must demonstrate that they have reimbursed alien beneficiaries in full for any such fees or other form of compensation (other than those for which the petitioners may be reimbursed) or risk denial of their petition. Most foreign worker recruiters charge each H–2B employee about $500.00 (inclusive of visa fees and some other fees) and USCIS believes most H–2B workers use a recruiter, or adviser of some sort in their home country. Some companies provide discounts to repeat customers for their placement fee and offer referral fees to workers who refer their friends and family to the program. Most of the recruiting companies refund or do not collect fees if the applicant's visa is denied at the embassy. An employer, on the other hand, pays from $500 to $4,000, per H–2B employee, including expenses, depending on the complexity of the situation, the home country, and the skills needed for the position. By barring petitions when the alien has reimbursed the petitioner for recruitment or job placement fees or

requiring a showing in a future petition that the petitioner has reimbursed the alien for such fees, this rule will effectively ban the payment of fees by the alien beneficiary above the visa fees, travel expenses and other normal expenses. Since the majority of H–2B employees are estimated to pay such fees, and such practices are expected to continue, this will result in a transfer of those costs to employers. If the entire $500 fee is considered a recruitment or placement fee, the estimated costs of this requirement is about $4,500 per employer, based on an average of 9 employees sponsored by each participating employer, or about $33 million total for all 66,000 H–2B employees per year.

• *Added transportation cost negligible*. The impact of requiring employers to pay workers' transportation expenses to return to their last place of foreign residence when there is a determination that they knew or reasonably should have known about the payment by the beneficiary of any job placement or related fees is expected to be negligible, because employers would be expected to reimburse the alien before being subjected to this sanction.

• *Ramifications for firms that collect a fee from the employee*. This rule will have an impact on employee recruiters, although the exact effects are not certain. USCIS has no data on the number of firms that recruit workers in foreign countries to come to the United States as H–2B employees, but the majority of H–2B workers are believed to use such a service. The proposal to reject petitions where there have been such fees charged the employee could have substantial ramifications for these firms, because their collecting a fee from the employee will put the employee at risk of being determined ineligible for the benefit for which they are assisting the employee in obtaining.

• *Reduced government burden and costs*. This rule is expected to reduce costs for the government by terminating the review of petitions approved based on countervailing evidence and the related mandatory H–2B reviews. Employees handling these reviews will be able to focus on eliminating application and petition backlogs for other benefits.

D. Regulatory Flexibility Act—Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to conduct a regulatory flexibility analysis which describes the impact of the proposed rule on small entities whenever an agency is publishing a notice of proposed rulemaking such as this one.

1. Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

a. Regulated entities

The four industries that are dominant users of the H–2B program are the landscaping, hotel, construction, and forestry industries, according to Department of Labor data on the participants in the employment-based visa program. The Small Business Administration (SBA) Small Business Size Regulations at 13 CFR part 121 provide standards for how large a for-profit concern can be and still qualify as a small business for Federal Government programs, based on the firm's average annual receipts and or the average employment of a firm. The SBA standards indicate that firms in landscaping, forestry, and hotels with average gross annual sales below $6.5 million are small businesses. For building contractors, the small business size guideline is maximum sales of $31 million and 500 employees.

b. Number of small entities to which the proposed rule will apply

Based on the above definitions, the U.S. Census Bureau's 2002 Economic Census reported that approximately 99.9 percent of employers in the construction industry, 95 percent in the forestry and landscaping industry, and 90.8 percent of those in the accommodation and food services industry were small businesses.[2] If the proportion of small employers participating in the H–2B program is similar to the overall market, these figures imply that, of the 15,000 Form I–129 filings per year for H–2B employees, at least 14,000 will be filed by small businesses looking to hire a seasonal worker. Therefore, this rule applies mainly to small businesses.

2. Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

a. Paperwork Reduction Act

The proposed rule adds a new ''reporting'' or ''recordkeeping'' requirement within the meaning of the Paperwork Reduction Act. The rule does not require professional skills for the preparation of ''reports'' or ''records'' under that Act.

The mechanism and parameters of the absconder reporting requirement are proposed in this rule at 8 CFR 214.2(h)(6)(i)(E)(1). The actual reporting requirements will be imposed when the **Federal Register** notice instructing approved petitioners on how, where, and what to report in accordance with that section is published. The Paperwork Reduction Act requirements will be complied with along with approval of that notice at that time after the remainder of the requirements of this rule have taken effect. DHS will obtain OMB approval and a new OMB control number of the requirements established at that time.

b. New Reporting Requirement

Reporting requirements will under 8 CFR 214.2(h)(6)(i)(E)(1) of this rule be provided via notice published in the **Federal Register**. This rule also adds recordkeeping requirements, because the petitioner will also be required to retain evidence of notification for a one-year period beginning from the date of the notification. DHS has no basis for estimating the cost of this new requirement on H–2B employers at this time and requests further comment on the actual costs or expenditures, if any, of the impact on firms as a result of this new reporting and recordkeeping requirement and how that impact may differ or vary for small entities.

3. Identification of federal rules that may duplicate, overlap or conflict with the proposed rule

DHS is unaware of any duplicative, overlapping, or conflicting federal rules. However, there are areas of interplay and dependency between this rule and those of the U.S. Department of Labor (DOL). For example, a proposed rule was recently published by DOL proposing changes that comport with this rule and vice versa. 73 FR 29942 (May 22, 2008). As noted below, DHS seeks comments and information about duplicative rules, as well as any other state, local, or industry rules or policies that impose similar requirements as those in this proposed rule. Comments pointing out provisions of this rule that duplicate, contradict, or are better suited for inclusion in the regulations of another Federal agency are welcome.

[2] U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, at *http://www.census.gov/prod/ec02/ec0223sg1t.pdf*. Page 9.

4. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered, such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities

Alternatives considered. The proposal in this rule that provides that petitions where a recruitment or finder's fee paid by an employee will be denied, may have an impact on a substantial number of small entities engaged in the foreign worker recruiting business. As a result, to regulate the practice of charging the alien beneficiary a placement or finder's fee in the home country, DHS considered the following alternatives.

1. *Prohibit the sponsoring employer from passing along any fees or expenses associated with finding, petitioning for, and hiring the employee through payroll deductions, or any other methods*. This requirement would mirror the requirements proposed by DOL that would prohibit employers from passing any of the expenses associated with obtaining a labor certification on to the employee. This option was not proposed because USCIS felt that imposing this requirement would have no effect on the practice of charging H–2B employees in the home country, which is the practice that has been the subject of numerous fraud complaints that the change is intending to address. Further, USCIS research indicates that most employers do not pass their administrative costs for finding or hiring the employee on to the employee, thus that restriction would serve no purpose.

2. *Establish a maximum allowable recruitment fee*. This option was not adopted for the proposed rule because USCIS has insufficient data on which to base such a fee. The maximum or reasonable recruiting fee would need to be based on the market value for the services provided to the alien beneficiary. An informal guideline has been suggested that if the fee is so high that the applicant would be tempted to stay longer than the visa expiration to make it worth his while, then the fee is exorbitant. However, defining a fee standard is not subjective. USCIS could not establish a valid fee amount without a thorough analysis, and the available information on the foreign worker recruiting industry is not sufficiently complete so as to afford such an analysis. USCIS feels that the employer would be in a stronger negotiating position than the alien to determine the proper fee. By establishing that the employer must reimburse the employee for the fee, or have the petition rejected or revoked, USCIS believes exorbitant fees will not be paid.

3. *Maintain status quo, and propose no provisions regarding employee paid fees*. USCIS has seen numerous reports recently of recruiters advertising that they can place temporary alien workers with such employers at no or minimal cost to the U.S. employers, and of employees being subjected to extortion or exorbitant fees. Therefore, some action was deemed necessary in the H–2B rulemaking context to provided added protections to workers while increasing the flexibility of the program for employers.

4. *Fines*. DHS considered promulgating regulatory authority to impose a fine of several thousand dollars against an agent or employer in the event that an agent and/or the employer were found to have knowledge of aliens being charged exorbitant fees or otherwise subject to abusive practices. The fine would depend upon the number of aliens involved. The agent or employer would be barred from being able to file any H–2B petitions with USCIS for two years. This option was not proposed because the level of the fine would be difficult to determine and the amount established could be viewed as arbitrary. Also, the level of fee to consider as exorbitant and practices to be considered abusive would have to be researched considerably for this provision to be effective.

5. Questions for Comment To Assist Regulatory Flexibility Analysis

Please provide comment on any or all of the provisions in the proposed rule with regard to:

a. The impact of the provision(s) (including any benefits and costs), if any; and

b. What alternatives, if any, DHS should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities in light of the above analysis. In particular, please provide the above information with regard to the following sections of the proposed rule:

i. The new reporting requirements on H–2B employers, including the time frame for reporting in 8 CFR 214.2(h)(6)(i)(E).

ii. The requirement for petitioners to reimburse H–2B workers under 8 CFR 214.2(h)(6)(i)(B).

iii. Any other requirement not mentioned above.

c. Costs to ''implement and comply'' with the rule including expenditures of time and money for any employee training; attorney, computer programmer, or other professional time; preparing relevant materials; processing materials, including, materials or requests for access to information; and recordkeeping.

Please describe ways in which the rule could be modified to reduce any costs or burdens for small entities consistent with the Immigration and Nationality Act's requirements.

Please describe whether and how technological developments could reduce the costs of implementing and complying with the rule for small entities or other operators.

Please provide any information quantifying the economic benefits of:

a. Reducing delays in the petition, application, and approval process.

b. Reducing the time required for an H–2B worker to be out of the country.

c. Encouraging employers that currently hire temporary nonagricultural workers who are not properly authorized to work in the United States to replace those workers with legal workers.

d. Minimizing immigration fraud and protecting against abuses that occur when aliens are required to pay employment fees.

Please identify all relevant federal, state or local rules that may duplicate, overlap or conflict with the proposed rule. In addition, please identify any industry rules or policies that already require compliance with the requirements of the DHS proposed rule.

E. Provisions to Which the Regulatory Flexibility Act Does Not Apply

CBP is also seeking comments through this rule with respect to a pilot program that would require that aliens admitted on certain temporary worker visas at a port of entry must depart through a port of entry participating in the program. Although there may be costs associated with participation in this program, the aliens impacted by this portion of the rule are not considered ''small entities,'' as that term is defined in 5 U.S.C. 601(6). Since the regulation will require the aliens to comply with the pilot program, rather than placing a requirement on the employers, the employers are not directly impacted by this provision of the proposed rule. Employers, including small entities, are free to offer assistance to their H–2B workers in complying with this requirement if they choose to do so. However, the employer's assumption of any costs inherent with complying with this requirement on behalf of their workers is voluntary and, therefore, not subject to the Regulatory Flexibility Act.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. This rule requires that a petitioner submit Form I–129, seeking to classify an alien as an H–2B nonimmigrant. This form has been previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for this collection is 1615–0009.

However, this rule requires that certain H–2B workers departing the United States participate in a temporary worker visa exit pilot program. This requirement will add to the number of respondents approved by OMB for the information collections in OMB control number 1600–0006, U.S. Visitor Immigrant Status and Indicator Technology (US–VISIT). When this rule is final, DHS will submit a request for a non-substantive change to OMB to account for this requirement's added burden.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements.

8 CFR Part 215

Administrative practice and procedure, Aliens, Travel restrictions.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

2. Section 204.5 is amended by adding paragraph (o) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(o) *Denial of petitions under section 204 of the Act based on a finding by the Department of Labor.* Upon a finding by the Department of Labor pursuant to section 214(c)(14)(A) of the Act that a petitioner substantially failed to meet any of the conditions of the H–2B petition or otherwise failed to provide H–2B status, or willfully misrepresented a material fact in such petition, USCIS may deny any employment-based immigrant petitions filed by that petitioner for a period of at least 1 year but not more than 5 years. The period of such bar to petition approval shall be based on the severity of the violation or violations. The decision to deny petitions, the time period for the bar to petitions, and the reasons for the time period will be explained in a written notice to the petitioner.

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–1305; 1372; 1379; 1731–32; sec. 14006, Pub. L. 108–287; sec. 643, Pub. L. 104–208; 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively.

4. Section 214.1 is amended by adding paragraph (k) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(k) *Denial of petitions under section 214(c) of the Act based on a finding by the Department of Labor.* Upon a finding by the Department of Labor pursuant to section 214(c)(14)(A) and (B) of the Act that a petitioner substantially failed to meet any of the conditions of the H–2B petition or otherwise failed to provide H–2B status, or willfully misrepresented a material fact in such petition, USCIS may deny any petition filed by that petitioner for nonimmigrant status under section 101(a)(15)(H) (except for status under section 101(a)(15)(H)(i)(b1)), (L), (O), and (P)(i) of the Act for a period of at least 1 year but not more than 5 years. The period of such bar to petition approval shall be based on the severity of the violation or violations. The decision to deny petitions, the time period for the bar to petitions, and the reasons for the time period will be explained in a written notice to the petitioner.

5. Section 214.2 is amended by:

a. Revising paragraph (h)(1)(ii)(D);

b. Revising paragraph (h)(2)(iii);

c. Redesignating paragraph (h)(2)(iv) as paragraph (h)(6)(viii), and by reserving paragraph (h)(2)(iv);

d. Revising paragraph (h)(6)(i);

e. Revising paragraph (h)(6)(ii)(B) introductory text;

f. Revising the word ''amendable'' to read ''amenable'' in the second sentence in paragraph (h)(6)(iii)(B);

g. Adding the word ''favorable'' immediately after the phrase ''has obtained a'' in paragraph (h)(6)(iii)(C);

h. Adding the word ''favorable'' immediately after the phrase ''After obtaining a'' in paragraph (h)(6)(iii)(E);

i. Revising paragraph (h)(6)(iv)(A);

j. Revising paragraph (h)(6)(iv)(D);

k. Removing paragraph (h)(6)(iv)(E);

l. Revising paragraph (h)(6)(v)(A);

m. Removing and reserving paragraphs (h)(6)(v)(C) and (D);

n. Adding the word ''States'' immediately before ''and'' in the first sentence in paragraph (h)(6)(v)(E)(*2*)(*iii*);

o. Revising paragraph (h)(6)(vi)(A);

p. Removing and reserving paragraph (h)(6)(vi)(B);

q. Revising paragraph (h)(6)(vi)(C);

r. Removing the period at the end of paragraph (h)(6)(vi)(D), and adding a ''; or'' in its place;

s. Revising the word ''or'' to read ''to'' in the first sentence in paragraph (h)(6)(vii);

t. Revising newly designated paragraph (h)(6)(viii);

u. Adding new paragraph (h)(6)(ix);

v. Adding new paragraph (h)(6)(x);

w. Revising paragraph (h)(8)(ii)(A);

x. Revising paragraph (h)(9)(iii)(B)(*1*);

y. Revising paragraph (h)(10)(ii);

z. Revising paragraph (h)(11)(iii)(A)(*2*);

aa. Revising paragraph (h)(13)(i)(B);

bb. Revising paragraph (h)(13)(iv); and by

cc. Revising paragraph (h)(13)(v).

The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(D) An H–2B classification applies to an alien who is coming temporarily to the United States to perform non-agricultural work of a temporary or seasonal nature, if there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to

the United States and at the place where the alien is to perform such services or labor. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed must be determined by USCIS. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam prior to the filing of a petition with USCIS.

* * * * *

(2) * * *

(iii) *Naming beneficiaries.* H–1B, H–1C, and H–3 petitions must include the name of each beneficiary. Except as provided in this paragraph (h), all H–2A and H–2B petitions must include the name of each beneficiary who is currently in the United States, but need not name any beneficiary who is not currently in the United States. Unnamed beneficiaries must be shown on the petition by total number. If all of the beneficiaries covered by an H–2A or H–2B temporary labor certification have not been identified at the time a petition is filed, multiple petitions for subsequent beneficiaries may be filed at different times but must include a copy of the same temporary labor certification. Each petition must reference all previously filed petitions associated with that temporary labor certification.

(iv) [Reserved.]

* * * * *

(6) * * *

(i) *Petition*—(A) *H–2B non-agricultural temporary worker.* An H–2B non-agricultural temporary worker is an alien who is coming temporarily to the United States to perform temporary services or labor, is not displacing qualified United States workers available to perform such services or labor, and whose employment is not adversely affecting the wages and working conditions of United States workers.

(B) *Prohibition on fee collection from alien beneficiaries.*

(*1*) *Denial or revocation of petition.* No fee or other compensation (either direct or indirect) may be collected from a beneficiary of an H–2B petition by a petitioner, agent, facilitator, recruiter, or similar employment service in connection with an offer or condition of H–2B employment (other than the lower of the actual transportation costs or fair market value of such transportation costs and any government-mandated passport, visa or inspection fees, if the employer has not agreed with the alien to pay such costs and fees). If USCIS determines that the petitioner has collected, or entered into an agreement to collect, such fee or compensation or that the petitioner knows or reasonably should know that the beneficiary has paid or agreed to pay any facilitator, recruiter, or similar employment service in connection with obtaining the H–2B employment, the H–2B petition will be denied or revoked on notice.

(*2*) *Effect of petition revocation.* Upon revocation of an H–2B petition based upon paragraph (h)(6)(i)(B)(1) of this section, the alien beneficiary's stay will be authorized and the alien will not accrue any period of unlawful presence under section 212(a)(9) of the Act for a 30-day period following the date of the revocation for the purpose of departure or extension of stay based upon a subsequent offer of employment. The employer shall be liable for the alien beneficiary's reasonable costs of return to his or her last place of foreign residence abroad, unless such alien obtains an extension of stay based on an approved H–2B petition filed by a different employer.

(*3*) *Reimbursement as condition to approval of future H–2B petitions.* Where it has been determined that a fee or other compensation (either direct or indirect) was collected from a beneficiary of an H–2B petition by the petitioner, agent, facilitator, recruiter, or similar employment service in connection with an offer or condition of H–2B employment (other than the lower of the actual transportation costs or fair market value of such transportation costs and any government-mandated passport, visa or inspection fees, if the employer has not agreed with the alien to pay such costs and fees), and the H–2B petitioner knew, or reasonably should have known such payment by the beneficiary, the H–2B petitioner must demonstrate to the satisfaction of USCIS that the petitioner has reimbursed the alien in full for such fees, compensation, or other remuneration as a condition to approval of any subsequent H–2B petition filed by such petitioner.

(C) *Petitioner's attestation.* A petition must include an attestation by the petitioner, certified as true and accurate by an appropriate official of the petitioner, of the following:

(*1*) During the period of intended employment for which the petition is approved, neither the alien workers' duties, place of employment, nor the entities for which the duties will be performed will expand beyond the related information provided on the Form I–129 and labor certification.

(*2*) Whether it received, directly or indirectly, any fee or other form of compensation from any alien beneficiary or has any arrangement or intends to have an arrangement for remuneration, direct or indirect, from any recruiter, facilitator or similar employment service with which it coordinates employment of H–2B workers in connection with H–2B employment, and if so, the name of any recruiter, facilitator, or similar employment service used to locate H–2B workers.

(*3*) To the best of its knowledge, whether any alien beneficiary has provided, or intends to provide, any remuneration, direct or indirect, to any such recruiter, facilitator, or similar employment service in connection with his or her H–2B employment; and

(*4*) Whether there has been any previous determination by USCIS that any fee, compensation, or other form of remuneration has been collected, directly or indirectly, from an alien beneficiary of the current H–2B petition in connection with the filing by the petitioner of any previous H–2B petition, and if so, whether the petitioner has reimbursed the alien in full for any such fees, compensation, or other remuneration (other than the lower of the actual transportation costs or fair market value of such transportation costs and any government-mandated passport, visa or inspection fees, if the employer has not agreed with the alien to pay such costs and fees).

(D) *Petitions for nationals of countries that refuse repatriation.* No H–2B petition can be approved for a citizen, subject, national or resident of a country whose government the Secretary of Homeland Security has determined consistently denies or unreasonably delays accepting the return of citizens, subjects, nationals, or residents who are subject to a final order of removal from the United States. The Secretary will review such determinations periodically to evaluate if the subject country is accepting repatriated nationals.

(E) *Petitioner agreements and notification requirements*—(*1*) *Agreements.* The petitioner agrees to notify DHS, within 48 hours, and beginning on a date and in a manner specified in a notice published in the **Federal Register** if: An H–2B worker fails to report for work within 5 days after the employment start date stated on the petition or within five days of the start date established by his or her employer, whichever is later; the non-agricultural labor or services for which H–2B workers were hired is completed more than 30 days early; or an H–2B worker absconds from the worksite or is terminated prior to the completion of

non-agricultural labor or services for which he or she was hired. The petitioner also agrees to retain evidence of such notification and make it available for inspection by DHS officers for a one-year period beginning on the date of the notification.

(*2*) *Abscondment.* An H–2B worker has absconded if he or she has not reported for work for a period of 5 consecutive work days without the consent of the employer.

(ii) * * *

(B) *Nature of petitioner's need.* Employment is of a temporary nature when the employer needs a worker for a limited period of time. That means the employer must establish that the need for the employee will end in the near, definable future. Generally, that period of time will be limited to one year or less, but in the case of a one-time occurrence event, could last longer than one year and up to three years. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peak load need, or an intermittent need.

* * * * *

(iv) * * *

(A) *Secretary of Labor's determination.* An H–2B petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by an approved labor certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers.

* * * * *

(D) *Employment start date.* An H–2B petition must state an employment start date that is the same as the date of employment need stated on the approved temporary labor certification. A petitioner filing an amended H–2B petition due to the unavailability of originally requested workers may state an employment start date that is later than the date of employment need stated on the previously approved temporary labor certification that is accompanying the amended H–2B petition.

(v) * * *

(A) *Governor of Guam's determination.* An H–2B petition for temporary employment on Guam shall be accompanied by an approved labor certification determination from the Governor of Guam stating that qualified workers in the United States are not available to perform the required services, and that the alien's employment will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam.

(C) [Reserved.]

(D) [Reserved.]

* * * * *

(vi) * * *

(A) *Labor certification.* A temporary labor certification issued by the Secretary of Labor or the Governor of Guam, as appropriate;

(B) [Reserved.]

(C) *Alien's qualifications.* In petitions where the labor certification application requires certain education, training, experience, or special requirements of the beneficiary who is present in the United States, documentation that the alien qualifies for the job offer as specified in the application for labor certification;

* * * * *

(viii) *Substitution of beneficiaries.* Beneficiaries in H–2B petitions that are approved for named or unnamed beneficiaries who have not been admitted may be substituted only if the employer can demonstrate that the total number of beneficiaries will not exceed the number of beneficiaries certified in the original labor certification. Beneficiaries who have been admitted may not be substituted without a new petition accompanied by a newly approved labor certification.

(A) To substitute beneficiaries who were previously approved for consular processing but have not been admitted with aliens who are outside of the United States, the petitioner shall, by letter and a copy of the petition approval notice, notify the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission. The petitioner shall also submit evidence of qualifications of beneficiaries to the consular office or port of entry prior to issuance of a visa or admission, if applicable.

(B) To substitute beneficiaries who were previously approved for consular processing but have not been admitted with aliens who are currently in the United States, the petitioner shall file an amended petition with fees at the Service Center where the original petition was filed, with a copy of the original petition approval notice, a statement explaining why the substitution is necessary, evidence of the qualifications of beneficiaries, if applicable, evidence of the beneficiaries' current status in the United States, and evidence that the number of beneficiaries will not exceed the number allocated on the approved labor certification, such as employment records or other documentary evidence to establish that the number of visas sought in the amended petition were not already issued. The amended petition must retain a period of employment within the same half of the fiscal year as the original petition. Otherwise, a new labor certification and subsequent H–2B petition would be required.

(ix) *Effect of violations of status.* An alien may not be accorded H–2B status who USCIS finds to have, at any time during the past 5 years, violated, other than through no fault of his or her own, any of the terms or conditions of admission into the United States as an H–2B nonimmigrant, including remaining beyond the specific period of authorized stay or engaging in unauthorized employment.

(x) *Enforcement.* The Secretary of Labor may investigate employers to enforce compliance with the conditions of a petition to admit or otherwise provide status to an H–2B worker.

* * * * *

(8) * * *

(ii) * * *

(A) Each alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b), 101(a)(15)(H)(i)(c), or 101(a)(15)(H)(ii) of the Act shall be counted for purposes of any applicable numerical limit, unless otherwise exempt from such numerical limit. The spouse and children of principal H aliens are classified as H–4 nonimmigrants and shall not be counted against numerical limits applicable to principals. In the event the U.S. Congress authorizes special provisions exempting certain H workers from numerical limits, such aliens shall not be counted against the applicable numerical limit, in accordance with such legislation.

* * * * *

(9) * * *

(iii) * * *

(B) *H–2B petition.* (*1*) The approval of the petition to accord an alien a classification under section 101(a)(15)(H)(ii)(b) of the Act shall be valid for the period of the approved labor certification.

* * * * *

(10) * * *

(ii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial, and of his or her right to appeal the denial of the petition under 8 CFR part 103. A determination that the statements on the petition were inaccurate, fraudulent, or misrepresented a material fact will result in denial of the petition. There is no appeal from a decision to deny an extension of stay to the alien.

(11) * * *

(iii) * * *

(A) * * *

(*2*) The statement of facts contained in the petition or on the application for a labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or

* * * * *

(13) * * *

(i) * * *

(B) When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15)(H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. A certain period of absence from the United States of H–2A and H–2B aliens can interrupt the accrual of time spent in such status against the three-year limit. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to spend time abroad.

* * * * *

(iv) *H–2B and H–3 limitation on admission.* An H–2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 3 months. An H–3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15)(H) and/or (L) of the Act; and an H–3 alien trainee who has spent 24 months in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

(v) *Exceptions.* The limitations in paragraph (h)(13)(iii) through (h)(13)(iv) of this section shall not apply to H–1B, H–2B, and H–3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. An absence from the United States can interrupt the accrual of time spent as an H–2B nonimmigrant against the three-year limit. If the accumulated stay is 18 months or less, an absence is interruptive if it lasts for at least 45 days. If the accumulated stay is greater than 18 months, an absence is interruptive if it last for at least two months. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

* * * * *

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

6. The authority citation for part 215 continues to read as follows:

Authority: 8 U.S.C. 1104; 1184; 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1365a note, 1379, 1731–32.

7. Section 215.9 is added to read as follows:

§ 215.9 Temporary Worker Visa Exit Program.

An alien admitted on certain temporary worker visas at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of their authorized period of stay through a port of entry participating in the program and present designated biographic and/or biometric information upon departure. U.S. Customs and Border Protection will publish a Notice in the **Federal Register** designating which temporary workers must participate in the Temporary Worker Visa Exit Program, which ports of entry are participating in the program, which biographical and/or biometric information would be required, and the format for submission of that information by the departing designated temporary workers.

Dated: August 11, 2008.

Michael Chertoff,

Secretary.

[FR Doc. E8–19306 Filed 8–19–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2448–08; DHS Docket No. USCIS–2008–0024]

RIN 1615–AA82

Petitions for Aliens To Perform Nonagricultural Temporary Services or Labor (H–2B): Withdrawal of Proposed Rule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is withdrawing the proposed rule, Petitions for Aliens to Perform Nonagricultural Temporary Services or Labor (H–2B), published on January 27, 2005, in the **Federal Register** at 70 FR 3984. The rule proposed significant changes to USCIS' regulations that were designed to increase the effectiveness of the H–2B nonimmigrant visa classification while providing protections for U.S. workers. The H–2B nonimmigrant visa classification applies to foreign workers to perform nonagricultural temporary labor or services. The proposed rule would have established a one-step petition process for U.S. employers seeking H–2B temporary workers eliminating the need for U.S. employers to apply for a labor certification from the Department of Labor (DOL); required electronic filing of the Petition for a Nonimmigrant Worker, Form I–129, within 60 days in advance of the requested employment start date; eliminated the use of agents as H–2B petitioners; and, established new management mechanisms allowing USCIS to maintain the integrity of the program. In light of the public's comments, USCIS is no longer moving forward with the proposed rule as designed and will publish a new proposed rule for public comments.

DATES: The proposed rule, published on January 27, 2005 (70 FR 3984), is withdrawn as of August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Hiroko Witherow, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave., NW., Washington, DC 20529, telephone (202) 272–8410.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Proposed Rule

The H–2 temporary worker program has existed without substantial modification since 1952. The

Immigration Reform and Control Act of 1986 divided H–2 workers into two categories: Temporary workers to perform agricultural labor or services (H–2A), and all other temporary workers (H–2B). In 1990, Congress attached a limitation on the number of H–2B workers, but otherwise the program has not significantly changed to accommodate employers' needs or to offer worker protections. After consulting with DOL and the Department of State, and reviewing the definitions and procedures used to regulate the H–2B nonagricultural temporary worker program, USCIS determined that the H–2B process should be modified to reduce unnecessary burdens that hinder petitioning employers' ability to effectively use this visa category. The proposed rule was published on January 27, 2005, with its intent being to increase efficiency in the program by removing existing regulatory barriers. 70 FR 3984.

II. Changes Contained in the Proposed Rule

The most significant proposed change was a migration to a one-stop attestation-based process whereby most U.S. employers seeking H–2B temporary workers would only be required to file one application, the Form I–129, Petition for a Nonimmigrant Worker, with USCIS. The proposal would have reduced the paper-based application process by requiring that most Form I–129 petitions be submitted to USCIS electronically through e-filing. The proposal would also have required e-filed petitions to be filed not more than 60 days in advance of the employment need. The proposed rule also would have precluded agents from filing H–2B petitions on behalf of the actual H–2B employer. Finally, the proposed rule included additional changes to ensure the integrity of the program through enforcement mechanisms.

III. Comments Received on the Proposed Rule

USCIS received 125 comments on the proposed rule during the 60-day comment period. The majority of the commenters were opposed to many changes proposed in the rule. The comments are summarized as follows:

- There were a significant number of negative comments regarding the proposal to create a one-stop attestation-based process. Some commenters stated that the existing labor certification process should remain with DOL because DOL, not USCIS, is directly charged with the protection of U.S. workers. Some also expressed concern that this change would lead to widespread fraud and misrepresentation.

A considerable number of commenters were in opposition to the proposed change requiring that petitioners e-file a petition within 60 days in advance of the employment need. Some raised concern that many employers are not necessarily well-versed in the access and use of the Internet.

- A significant number of comments were opposed to the proposal to eliminate agents. Many commenters stressed that agents perform a vital function in the H–2B filing process on behalf of the employers who are not conversant with the applicable laws and regulations related to the H–2B program.
- The majority of the comments stressed that the proposed changes would result in decreased protections for U.S. workers and the likely proliferation of fraud within the program.

Based upon a review of the rulemaking record as a whole, DHS has decided to withdraw the January 27, 2005, proposed rule and terminate the associated proposed rulemaking action. DHS, therefore, will not publish specific responses to each comment.

IV. Withdrawal of the Proposed Rule

For the reasons described in this document, DHS is withdrawing the proposed rule published on January 27, 2005 (FR Doc. 05–1240, 70 FR 3984).

Dated: August 11, 2008.

Michael Chertoff,

Secretary.

[FR Doc. E8–19322 Filed 8–19–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 90; Docket No. TTB–2008–0009]

RIN 1513–AB57

Proposed Expansions of the Russian River Valley and Northern Sonoma Viticultural Areas (2008R–031P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to expand the Russian River Valley and Northern Sonoma American viticultural areas in Sonoma County, California. The Russian River Valley viticultural area proposed expansion of 14,044 acres would increase the size of that viticultural area to 169,028 acres. The Northern Sonoma viticultural area proposed expansion of approximately 44,244 acres would increase the size of that viticultural area to 394,088 acres. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed change to our regulations.

DATES: We must receive written comments on or before October 20, 2008.

ADDRESSES: You may send comments to any of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0009 at ''Regulations.gov,'' the Federal e-rulemaking portal); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at *http://www.regulations.gov* within Docket No. TTB–2008–0009. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 90. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–927–2400 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA 24014; telephone (540) 344–9333.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among

other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Petitioners may use the same procedure to request changes involving existing viticultural areas. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Russian River Valley Expansion Petition

Gallo Family Vineyards submitted a petition proposing a 14,044-acre expansion of the established Russian River Valley viticultural area (27 CFR 9.66). The proposed expansion would increase the established viticultural area's acreage by approximately 9 percent, to 169,028 acres. The petitioner explains that approximately 550 acres of the proposed expansion area were planted to grapes at the time of this petition. The petitioner's Two Rock Ranch Vineyard, with 350 acres planted to grapes, lies near the southern end of the proposed expansion area.

The Russian River Valley viticultural area is located approximately 50 miles north of San Francisco in central Sonoma County, California. The viticultural area was originally established by Treasury Decision (T.D.) ATF–159, published in the **Federal Register** (48 FR 48813) on October 21, 1983. It was expanded by 767 acres in T.D. TTB–7, published in the **Federal Register** (68 FR 67370) on December 2, 2003, and again by 30,200 acres in T.D. TTB–32, published in the **Federal Register** (70 FR 53299) on September 8, 2005. Although T.D. TTB–32 states that after the 2005 expansion the viticultural area covered 126,600 acres, the current petition provides information updating the present size of the viticultural area to a total of 154,984 acres.

The current Russian River Valley viticultural area, with the exception of its southern tip, lies within the Northern Sonoma viticultural area (27 CFR 9.70). The Northern Sonoma viticultural area, in turn, lies largely within the Sonoma Coast viticultural area (27 CFR 9.116). The Northern Sonoma and Sonoma Coast viticultural areas are both entirely within the North Coast viticultural area (27 CFR 9.30).

The current Russian River Valley viticultural area also entirely encompasses two smaller viticultural areas—in its northeastern corner, the Chalk Hill viticultural area (27 CFR 9.52), and in the southwest, the Green Valley of Russian River Valley viticultural area (27 CFR 9.57).

According to the petition, the proposed expansion would extend the current viticultural area boundary south and east, encompassing land just west of the cities of Rohnert Park and Cotati. The proposed expansion area lies within the Sonoma Coast and North Coast viticultural areas but not within the Northern Sonoma viticultural area. According to the petition, the proposed expansion area lies almost entirely within the Russian River Valley watershed, is historically part of the Russian River Valley, and shares all the significant distinguishing features of the Russian River Valley viticultural area.

Name Evidence

The petitioner states that the proposed expansion area is widely recognized as part of the Russian River watershed, a key criterion cited in past rulemaking documents regarding the existing viticultural area. T.D. ATF–159 states that the Russian River Valley viticultural area ''includes those areas through which flow the Russian River or some of its tributaries * * *.'' Moreover, the petitioner contends that before the establishment of the current viticultural area boundary, the proposed expansion area was commonly considered part of the Russian River Valley.

The petitioner includes several pieces of evidence showing the expansion area's inclusion in the Russian River watershed. A submitted map shows that almost all the proposed expansion area lies within the Russian River watershed (see ''The California Interagency Watershed Map of 1999,'' published by the California Resources Agency, updated 2004). The petitioner notes that drainage is through the Laguna de Santa Rosa waterway beginning near the east side of the proposed expansion area and flowing west and north through the current viticultural area. Thus, the waterway provides a common connection between the two areas.

The petitioner includes an informational brochure published by the Russian River Watershed Association (RRWA), an association of local governments and districts that coordinates regional programs to protect or improve the quality of the Russian River watershed. A map in the brochure shows that the watershed comprises both the current viticultural area and the area covered by the proposed expansion.

The petitioner submits a letter in which the RRWA asks the California Department of Transportation to place a sign marking the southern boundary of the Russian River watershed at a point on northbound Highway 101 near the City of Cotati in Sonoma County, California. This point is on the southeastern boundary of the proposed expansion area. The petitioner notes that the State has installed the requested sign and a sign at another point on the southern boundary of the proposed expansion area.

Also submitted with the petition is 2002 water assessment data published by the U.S. Environmental Protection Agency. This data includes the expansion area in its assessment of the Russian River watershed. Finally, the petitioner includes a Russian River Valley area tourism map that encompasses the proposed expansion area (see ''Russian River Map,'' (*http://russianrivertravel.com/*)).

Several documents relating to the agricultural and economic history of Sonoma County were also submitted by the petitioner. The petitioner states that they show that the proposed expansion area and the current viticultural area share a history of grape growing. For example, an 1893 survey compares the yields of individual grape growers in the established viticultural area with those of growers in the proposed expansion area (see ''History of the Sonoma Viticultural District,'' by Ernest P. Peninou, Nomis Press, 1998). The petitioner asserts that this document clearly shows that growers in the two areas grew similar grape varieties under similar growing conditions with similar yields.

A letter from Robert Theiller submitted with the petition describes the family-owned Xavier Theiller Winery. The winery, now defunct, operated in the proposed expansion area from 1904 to 1938. According to Mr. Theiller, it crushed grapes from both the area encompassed by the current Russian River Valley viticultural area and the area covered by the proposed expansion. The letter specifically states that ''* * * people involved in grape growing and other agriculture in the area of the winery knew that [the proposed expansion area] was part of the Russian River Valley.''

The petition also includes a letter from wine historian William F. Heintz. Mr. Heintz is the author of ''Wine and Viticulture History of the Region Known as the Russian River Appellation'' (Russian River Valley Winegrowers, 1999). In his letter, Mr. Heintz writes:

> I agree with the observation in your petition that the proposed expansion area and the main part of the Russian River Valley viticultural area, which lies to the north, have historically been part of one region in terms of common climate and geographic features, settlement, and the development of agriculture and transportation. For these reasons, I have always considered the proposed expansion area and the area to the north that is in the current Russian River Valley viticultural area to belong together. In my opinion, the proposed expansion area is part of the same historical district as the existing Russian River Valley viticultural area.

Boundary Evidence

According to the petitioner, the 2005 expansion created an artificial line for the southeast boundary. Proceeding south down the U.S. 101 corridor, it abruptly turns due west at Todd Road. Consequently, on a map, the Russian River Valley viticultural area appears to have had a ''bite'' taken out of its southeastern corner despite the fact that it and the proposed expansion area share common features of climate, soil, and watershed.

The proposed expansion would change the southeastern boundary of the current Russian River Valley viticultural area. At a point where the current southern boundary now abruptly turns north, the proposed new boundary line would generally continue to follow the defining ridge on the southern flank of the Russian River watershed. It would turn north at U.S. 101, eventually meeting the southeast corner of the existing boundary, adding an area almost entirely within the Russian River watershed.

Distinguishing Features

Climate

Past rulemakings regarding the Russian River Valley viticultural area have stated that coastal fog greatly affects the area's climate. T.D. TTB–32 at 70 FR 53298 states, for example, that ''Fog is the single most unifying and significant feature of the previously established Russian River Valley viticultural area.'' The petitioner states that the proposed expansion area lies directly in the path of the fog that moves from the ocean into southern and central Sonoma County; thus, the same fog influences both the proposed expansion area and the current viticultural area. Consequently, there is no ''fog line'' dividing the current viticultural area and the proposed expansion area, according to the petitioner.

The petitioner provides a report showing the effect of the fog on the climate of the current viticultural area and proposed expansion area (see ''Sonoma County Climatic Zones,'' Paul Vossen, University of California Cooperative Extension Service, Sonoma County, 1986 (*http://cesonoma.ucdavis.edu/*)). The report describes the fog as passing through the Petaluma Gap and into the expansion area, as follows:

> The major climatic influence in Sonoma County is determined by the marine (ocean) air flow and the effect of the geography diverting that air flow. During an average summer there are many days when fog maintains a band of cold air all around the coastline and cool breezes blow a fog bank in through the Petaluma Gap northward toward Santa Rosa and northwestward toward Sebastopol. This fog bank is accompanied by a rapid decrease in temperature which can be as much as 50 °F.

Additionally, the petitioner provides an online article delineating the presence of fog in the proposed expansion area (''Fog Noir,'' by Rod Smith, September/October 2005 at *http://www.privateclubs.com/Archives/2005-sept-oct/wine_fog-noir.htm*. The article describes satellite images of fog moving through the Russian River Valley, as follows:

> Until recently everyone assumed that the Russian River itself drew the fog inland and distributed it over the terrain west of Santa Rosa. Supplemental fog, it was thought, also came in from the southwest over the marshy lowlands along the coast between Point Reyes and Bodega Bay—the so-called Petaluma Wind Gap.
>
> In fact, it now appears to be the other way around. A new generation of satellite photography, sensitive enough to pick up translucent layers of moist air near the ground, shows for the first time the movement of the fog throughout the Russian River Valley region.
>
> * * * * *
>
> In Bobbitt's snapshot, the fog pours, literally pours, through the Petaluma Gap. The ocean dumps it ashore and the inland heat sink reels it in * * *.

According to the petitioner, the proposed expansion area also has the same ''coastal cool'' climate as the current Russian River Valley viticultural area. T.D. ATF–159, T.D. TTB–7, and T.D. TTB–32 refer to the Winkler degree-day system, which classifies climatic regions for grape growing. In the Winkler system, heat accumulation is measured during the typical grape-growing season from April to October. One degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth (see ''General Viticulture,'' Albert J. Winkler, University of California Press, 1974). As noted in T.D. ATF–159, the Russian River Valley viticultural area is termed ''coastal cool'' and has an annual range of 2,000 to 2,800 degree days.

The petitioner concedes that the ''Sonoma County Climate Zones'' report cited above would place most of the proposed expansion area and part of the 2005 expansion area within the ''marine'' zone, instead of the warmer coastal cool zone. However, the petitioner argues that at the time of the 2005 expansion, TTB recognized that more current information had superseded the information in the 1986 report. Further, the petitioner argues

that climate information included in the petition and presented below shows that the proposed expansion area actually has a coastal cool climate.

Using the Winkler system, the petitioner provides a table that includes a complete degree day data set for the April through October growing season at seven vineyards, including the petitioner's Two Rock Ranch Vineyard in the southern part of the proposed expansion area. The table is reproduced below.

AVERAGE GROWING SEASON 1983–2005

[The 2005 expansion used 2001 climate data]

Vineyard	Annual degree days	Establishment of area
Osley West	2,084	2005 expansion.
Two Rock Ranch	2,227	Proposed expansion.
Bloomfield	2,332	2005 expansion.
Laguna Ranch	2,403	1983 establishment.
Osley East	2,567	2005 expansion.
MacMurray Ranch	2,601	1983 establishment.
Le Carrefour	2,636	2005 expansion.

The petitioner states that the table shows that all seven vineyards, including the Two Rock Ranch in the proposed expansion area, fall within the coastal cool climate range of 2,000 to 2,800 annual degree days. The petitioner notes the consistency of the degree day data for the 1983 establishment of the viticultural area, the 2005 expansion, and the current proposed expansion. The petitioner states that the degree day data in the table shows that the proposed expansion area has the same climate as the current Russian River Valley viticultural area. Further, the petitioner provides a raster map showing that annual average degree days in the proposed expansion area are within the same range as much of the existing viticultural area (see ''Growing Degree Days'' for Sonoma County (1951–80 average), published by the Spatial Climate Analysis Service, Oregon State University (*http://www.ocs.oregonstate.edu/index.html*)).

The petitioner notes that the annual average number of hours between 70 and 90 degrees Fahrenheit during the April through October growing season for 1996–98 at the Two Rock Ranch Vineyard was 940 hours. Based on the ''Sonoma County Climatic Zones'' map, this average lies within the 800- to 1100-hour range that characterizes the coastal cool zone. The marine zone has fewer than 800 hours between 70 and 90 degrees Fahrenheit during the growing season.

The petitioner submits a report, written at the request of the petitioner, that includes a detailed analysis of the climate of the proposed expansion area. The petitioner requested expert commentary on the proposed expansion area and states that the report's author, Patrick L. Shabram, geographic consultant, has extensive experience in Sonoma County viticulture.

Mr. Shabram disputes the idea that the proposed expansion area is in a marine climate zone. Mr. Shabram cites three main factors in support of a determination that the climate zone of the proposed expansion area is not marine. First, successful viticulture would not be possible in a true marine zone because of insufficient solar radiation. Second, the proposed expansion area is well inland as compared to the rest of the marine zone; climatic conditions in the proposed expansion area would not be characteristic of a marine zone. Finally, Mr. Shabram states that the petitioner's climate data (summarized above) ''* * * clearly demonstrates that the area should be classified as 'Coastal Cool,' rather than the Marine climate type.''

Mr. Shabram provided the petitioner with a map that depicts all the proposed expansion area as belonging to the coastal cool zone (see ''Revised Sonoma County Climatic Zones of the Russian River Valley Area,'' by Patrick L. Shabram, 2007, based on ''Sonoma County Climatic Zones'' and ''Revised Coastal Cool/Marine Climate Zones Boundary,'' by Patrick L. Shabram).

Topography and Elevation

According to the petitioner, the southernmost portion of the proposed expansion area is on the ''Merced Hills'' of the Wilson Grove formation. These are gently rolling hills dominantly on 5 to 30 percent slopes. The current Russian River Valley viticultural area does not encompass these hills; the proposed expansion area includes a portion of them.

The northern portion of the proposed expansion area comprises the essentially flat Santa Rosa Plain. The plain is consistent with the portion of the current Russian River Valley viticultural area that wraps around both the west and north sides of the proposed expansion. Elevations in the proposed expansion area range from 715 feet down to 75 feet above sea level. They are similar to those in adjoining areas of the current Russian River Valley viticultural area.

Soils and Geology

The petitioner discusses the similarities between the soils of the proposed expansion area and those of the current viticultural area based on a soil association map (see ''Soil Survey of Sonoma County, California,'' online, issued by the U.S. Department of Agriculture, Natural Resources Conservation Service (*http://websoilsurvey.nrcs.usda.gov/app/*)). The soils on the Merced Hills included in the proposed expansion area formed mainly in sandstone rocks of the underlying Wilson Grove formation. This formation is characterized by low lying, rolling hills beginning just south of the Russian River near Forestville, arching southeast through Sebastopol, and ending at Penngrove. It formed 3 to 5 million years ago under a shallow sea. According to the petitioner, the soils underlain by this formation are well suited to growing grapes in vineyards.

The petitioner provides the following quotation discussing the suitability of the soils to growing grapes in the proposed expansion area:

> The sandy loam soils of the apple-growing region of Gold Ridge-Sebastopol form as a direct result of breakdown of Wilson Grove rock. The low ridge running from Forestville to Sebastopol and south to Cotati is the classic terroir of this association, now being recognized as prime land and climate for Pinot Noir and Chardonnay. (''Diverse Geology/Soils Impact Wine Quality,'' by Terry Wright, Professor of Geology, Sonoma

State University, *Practical Winery & Vineyard*, September/October 2001, Vol. XXIII, No. 2.)

The petitioner notes that the Wilson Grove formation underlies the current Russian River Valley viticultural area, but the current southeastern border cuts north to south through the formation, midway between Sebastopol and Cotati. However, the soil associations on either side of the southeastern border of the current Russian River Valley viticultural area are identical. The Goldridge-Cotati-Sebastopol soil association is nearly continuous throughout the formation. The petitioner reports that areas of Sebastopol sandy loam are in the Laguna Ranch Vineyard just north of the town of Sebastopol (in the current viticultural area) and also in the Two Rock Ranch Vineyard in the proposed expansion area, just west of the town of Cotati.

The petitioner states that the Clear Lake-Reyes association is in the portion of the proposed expansion area north of the Merced Hills. The soils in this association are poorly drained, nearly level to gently sloping clays and clay loams in basins. They are in the southeast portion of the Santa Rosa plain and also in pockets further north, almost directly west of the city of Santa Rosa. The Huichica-Wright-Zamora association is further north in the proposed expansion area. The soils of this association are somewhat poorly drained to well drained, nearly level to strongly sloping loams to silty loams on low bench terraces and alluvial fans. They are common in the middle and northern portions of the Santa Rosa plain. They are predominant in the eastern portion of the current Russian River Valley viticultural area, including the city of Santa Rosa, and in the proposed expansion area.

The petitioner notes that the ''Soil Survey of Sonoma County, California'' soil association map cited above shows that the current viticultural area boundary arbitrarily cuts directly through four major soil associations: Goldridge-Cotati-Sebastopol, Clear Lake-Reyes, Steinbeck-Los Osos, and Huichica-Wright-Zamora. The soils and the geology in the proposed expansion area are nearly identical to those in the adjacent areas of the current Russian River Valley viticultural area.

TTB notes that T.D. ATF–159, which established the Russian River Valley viticultural area, does not identify any predominant soils or indicate any unique soils of the viticultural area.

Grape Brix Comparison

The petitioner compares Brix for grapes grown in both the current viticultural area and the proposed expansion area. Brix is the quantity of dissolved solids in grape juice, expressed as grams of sucrose in 100 grams of solution at 60 degrees Fahrenheit (see 27 CFR 24.10); thus, Brix is the percent of sugar by weight. Citing a brochure published by the Russian River Winegrowers Association, the petitioner notes that Pinot Noir and Chardonnay are the two most prominent grape varieties grown in the established Russian River Valley viticultural area. The successful cultivation of the Pinot Noir grape, in particular, has been considered a hallmark of the Russian River Valley viticultural area, and the Pinot Gris grape variety recently has been growing in popularity.

Data submitted with the petition shows the 4-year average Brix comparisons for the period 2003–6 for the Pinot Noir, Chardonnay, and Pinot Gris varieties among three vineyards in the current Russian River Valley viticultural area and the Two Rock Ranch Vineyard in the proposed expansion area (see table below). The petitioner asserts that the Brix levels for each variety at all of the vineyards are very similar, reflecting similar growing conditions for the grapes.

2003–6 AVERAGE BRIX FOR SOME WINEGRAPES GROWN ON RANCHES IN THE CURRENT VITICULTURAL AREA AND THE PROPOSED VITICULTURAL AREA

Ranch	Average Brix		
	Pinot Noir	Chardonnay	Pinot Gris
Laguna North	25.04	23.79	.....
Del Rio	26.69	23.24	24.68
MacMurray	25.77	.....	24.71
Two Rock*	25.80	23.55	24.14

* Located in the proposed viticultural area.

In addition to the petition evidence summarized above, the petition includes six letters of support from area grape growers and winery owners. The supporters generally state their belief that the proposed expansion area has the same grape growing conditions as the current Russian River Valley viticultural area. The petition also includes a ''Petition of Support: Russian River Valley AVA Expansion'' with 208 signatures.

Opposition to the Proposed Expansion

Prior to and during review of the petition for the proposed expansion, TTB received by mail, facsimile transmission, and e-mail more than 50 pieces of correspondence opposing the petitioner's proposed expansion. The correspondence generally asserts that the proposed expansion area falls outside the coastal fog line and thus has a different climate than that of the current viticultural area. The opponents of the proposed expansion are mostly vineyard or winery owners from the current viticultural area. Several of them state that even though grapes grown in the proposed expansion area ''may eventually be brought to similar Brix, pH and total acidity maturity, the bloom and harvest dates are much later than in the Russian River Valley.'' TTB, while noting this opposing correspondence, also notes that the assertions in the correspondence were not accompanied by any specific data that contradicts the petitioner's submitted evidence.

Northern Sonoma Expansion

TTB notes that the current boundaries of the Russian River Valley viticultural area and of the Green Valley of Russian River Valley viticultural area (which lies entirely within the Russian River Valley area) extend beyond the Northern Sonoma viticultural area boundary to the south and southeast; in the case of the Russian River Valley viticultural area, this was as a result of the 30,200-acre, 2005 expansion approved in T.D. TTB–32. The currently proposed 14,044-acre expansion of the Russian River Valley viticultural area similarly is outside the boundary line of the Northern Sonoma viticultural area.

TTB also proposes in this document a southern and southeastern expansion

of the Northern Sonoma viticultural area boundary line to encompass all of the Russian River Valley viticultural area, including the currently proposed expansion of the Russian River Valley viticultural area, so that all of the Russian River Valley viticultural area would again fall within the Northern Sonoma viticultural area, as was the case prior to the 2005 expansion. The Northern Sonoma viticultural area would increase in size by 44,244 acres to 394,088 acres, or by 9 percent. The following information is provided in support of this proposed expansion.

Name and Boundary Evidence

The Northern Sonoma viticultural area was established on May 17, 1985, by T.D. ATF–204 (50 FR 20560), which stated at 50 FR 20562:

> * * * Six approved viticultural areas are located entirely within the Northern Sonoma viticultural area as follows: Chalk Hill, Alexander Valley, Sonoma County Green Valley [subsequently renamed Green Valley of Russian River Valley], Dry Creek Valley, Russian River Valley, and Knights Valley.
>
> The Sonoma County Green Valley and Chalk Hill areas are each entirely within the Russian River Valley area. The boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley areas all fit perfectly together dividing northern Sonoma County into four large areas. The Northern Sonoma area uses all of the outer boundaries of those four areas with the exception of an area southwest of the Dry Creek Valley area and west of the Russian River Valley area.

The originally established Northern Sonoma viticultural area was expanded by T.D. ATF–233, published in the **Federal Register** on August 26, 1986 (51 FR 30352) and, again, by T.D. ATF–300, published in the **Federal Register** on August 9, 1990 (55 FR 32400).

The current southern portion of the boundary line of the Northern Sonoma viticultural area, west to east, follows California State Highway 12 from its intersection with Bohemian Highway, through the town of Sebastopol, to its intersection with Fulton Road. Although T.D. ATF–204 does not explain the basis for the choice of California State Highway 12 as the southern portion of the Northern Sonoma boundary line, TTB notes that at that time California State Highway 12 also formed the southern portion of the boundary line of the Russian River Valley viticultural area.

T.D. ATF–204 included information regarding the geographical meaning of ''Northern Sonoma'' as distinct from the rest of Sonoma County. Although a Web search conducted by TTB failed to disclose conclusive information regarding current nonviticultural usage of ''Northern Sonoma'' as a geographical term, a Web search for ''Southern Sonoma County'' did disclose specific geographical data. The Southern Sonoma County Resource Conservation District (SCC–RCD) Web site has Sonoma County maps and describes the district as including the ''southern slopes of Mecham Hill'' (alternative spelling of ''Meacham,'' as on the USGS map), as the northern portion of the Petaluma River watershed in southern Sonoma County. Meacham Hill, according to the USGS Cotati map, lies 1.25 miles southeast of the area included in the expansion of the Northern Sonoma viticultural area proposed in this document. Further, the SCC–RCD maps show that the southern Sonoma County watershed excludes the Gold Ridge District, which comprises much of the Russian River watershed, including the Russian River Valley viticultural area and the area proposed in this document to be added to it.

Sonoma County Relocation, a real estate service, defines southern Sonoma County as extending south from the town of Penngrove. According to the USGS Cotati map, Penngrove lies 2.4 miles east-southeast of the proposed expansion of the Northern Sonoma viticultural area boundary line. The City of Petaluma, the southernmost large population center in Sonoma County, lies 6 miles southeast of the proposed expansion to the Northern Sonoma viticultural area.

Based on the above, we believe it is reasonable to conclude that the name ''Northern Sonoma'', as distinct from southern Sonoma County, includes all of the Russian River Valley viticultural area, including the proposed expansion of that area that is the subject of this document.

Distinguishing Features

According to the USGS Sonoma County topographical map, the topography of the area that would be included in the proposed expansion of the Northern Sonoma viticultural area has only a few gently rolling hills and ridges in the large region known as ''Cotati Valley.'' The topography of the expansion area mirrors the valley terrain that is to its north and that is within the original boundary line.

TTB Determinations

TTB concludes that the petition to expand the 155,024-acre Russian River Valley viticultural area by 14,044 acres merits consideration and public comment, as invited in this notice. TTB also concludes that the expansion of the Northern Sonoma viticultural area to conform its southern and southeastern boundary line to that of the expanded Russian River Valley viticultural area merits consideration and public comment.

Boundary Description

See the narrative boundary descriptions of the petitioned-for expansion of the Russian River Valley viticultural area and the TTB-proposed expansion of the Northern Sonoma viticultural area in the proposed § 9.66 and § 9.70 regulatory text amendments published at the end of this notice.

Maps

The petitioner provided the required map to document the proposed expansion of the Russian River Valley viticultural area, and we list it below in the proposed § 9.66 regulatory text amendment. TTB relied on maps provided for the 2005 expansion of the Russian River Valley viticultural area and the map provided by the petitioner for the current expansion to document the boundary description for the proposed expansion of the Northern Sonoma viticultural area. A revised and expanded list of maps is included in the proposed § 9.70 regulatory text amendment.

Impact on Current Wine Labels

The proposed expansions of the Russian River Valley and Northern Sonoma viticultural areas will not affect currently approved wine labels. The approval of this proposed expansion may allow additional vintners to use ''Russian River Valley'' or ''Northern Sonoma'' as an appellation of origin on their wine labels. Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be eligible to use a viticultural area name as an appellation of origin or a term of viticultural significance in a brand name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should expand the Russian River Valley viticultural area as described above. We

specifically request comment on the similarity of the proposed expansion area to the current Russian River Valley viticultural area. In particular, we would like comments on the climate of the proposed Russian River Valley viticultural area expansion area as compared to that of the current viticultural area and on the placement of the boundary lines for the proposed expansion.

We also invite comments on the proposed expansion to the Northern Sonoma viticultural area as described in this document. Specifically, we are interested in comments that address this proposed expansion as it relates to the 2005 expansion and to the current proposed expansion of the Russian River Valley viticultural area.

Whether in favor of, or in opposition to, either of the proposed expansions, you should support any comments made with specific data or other appropriate information about the name, proposed boundaries, or distinguishing features of the proposed expansion area.

Submitting Comments

You may submit comments on this notice by using one of the following two methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2008–0009 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 90 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on ''User Guide'' under ''How to Use this Site.''

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 90 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov,* please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments we receive about this proposal within Docket No. TTB–2008–0009 on the Federal e-rulemaking portal, *Regulations.gov,* at *http://www.regulations.gov*. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 90. You may also reach the relevant docket through the *Regulations.gov* search page at *http://www.regulations.gov*. For instructions on how to use *Regulations.gov*, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry drafted this notice. Other staff members of the Regulations and Rulings Division contributed to the notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Section 9.66 is amended:

a. In paragraph (b), by removing the word ''and'' at the end of paragraph (b)(9), by removing the word '', and'' at the end of paragraph (b)(10) and adding, in its place, a semicolon, by removing the period at the end of paragraph (b)(11) and adding, in its place, the word ''and'' preceded by a semicolon, and by adding a new paragraph (b)(12); and

b. In paragraph (c), by revising paragraphs (c)(15) through (c)(19), by redesignating paragraphs (c)(20) through (c)(34) as paragraphs (c)(26) through (c)(40), and by adding new paragraphs (c)(20) through (c)(25).

The additions and revision read as follows:

§ 9.66 Russian River Valley.

* * * * *

(b) * * *

(12) Cotati Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, Photorevised 1980.

(c) * * *

(15) Proceed southeast 0.5 mile, crossing over the end of an unnamed,

unimproved dirt road to an unnamed 524-foot elevation peak, T6N, R8W, on the Two Rock map.

(16) Proceed southeast 0.75 mile in a straight line to the intersection of an unnamed unimproved dirt road (leading to four barn-like structures) and an unnamed medium-duty road (known locally as Roblar Road), T6N, R8W, on the Two Rock map.

(17) Proceed south 0.5 mile to an unnamed 678-foot elevation peak just slightly north of the intersection of T5N and T6N, R8W, on the Two Rock map.

(18) Proceed east-southeast 0.8 mile to an unnamed peak with a 599-foot elevation, T5N, R8W, on the Two Rock map.

(19) Proceed east-southeast 0.7 mile to an unnamed peak with a 604-foot elevation, T5N, R8W, on the Two Rock map.

(20) Proceed east-southeast 0.9 mile to the intersection of a short, unnamed light-duty road leading past a group of barn-like structures and a medium duty road known locally as Meacham Road, and cross onto the Cotati map T5N, R8W.

(21) Proceed north-northeast 0.75 mile to the intersection of Meacham and Stony Point Roads, T5N, R8W, on the Cotati map.

(22) Proceed southeast 1.1 miles along Stony Point Road to the point where the 200-foot elevation contour line intersects Stony Point Road, T5N, R8W, on the Cotati map.

(23) Proceed north-northeast 0.5 mile to the point where an unnamed intermittent stream intersects U.S. 101 (and to the point where the land grant line also crosses), T5N, R8W, on the Cotati map.

(24) Proceed north 4.25 miles along U.S. 101 to the point where Santa Rosa Avenue exits U.S. 101 (approximately 0.5 mile north of the Wilfred Avenue overpass) T6N, R8W, on the Cotati map.

(25) Proceed north 1.1 miles along Santa Rosa Avenue to its intersection with Todd Road, crossing onto the Santa Rosa map, T6N, R8W, on the Santa Rosa map.

* * * * *

3. Section 9.70 is amended:

a. By revising paragraph (b); and

b. In paragraph (c), by revising the introductory text and paragraphs (c)(1) through (c)(5), by redesignating paragraphs (c)(6) through (c)(26) as paragraphs (c)(23) through (c)(43), and by adding new paragraphs (c)(6) through (c)(22).

The revisions and addition read as follows:

§ 9.70 Northern Sonoma.

* * * * *

(b) *Approved Maps*. The nine United States Geological Survey (USGS) maps used to determine the boundary of the Northern Sonoma viticultural area are titled:

(1) Sonoma County, California, scale 1:100 000, 1970;

(2) Asti Quadrangle, California, scale 1:24 000, 1959, Photorevised 1978;

(3) Jimtown Quadrangle, California—Sonoma County; scale 1:24 000, 1955, Photorevised 1975;

(4) Camp Meeker Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, Photorevised 1971;

(5) Valley Ford Quadrangle, California, scale 1:24 000, 1954, Photorevised 1971;

(6) Two Rock Quadrangle, California, scale 1:24 000, 1954, Photorevised 1971;

(7) Cotati Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, Photorevised 1980;

(8) Santa Rosa Quadrangle, California—Sonoma Co., scale 1:24 000, 1954, Photorevised 1980; and

(9) Mark West Springs Quadrangle, California, scale 1:24 000, 1993.

(c) *Boundary*. The Northern Sonoma viticultural area is located in Sonoma County, California. The boundary description includes (in parentheses) the local names of roads that are not identified by name on the map.

(1) The beginning point is on the USGS Sonoma County, California, map in the town of Monte Rio at the intersection of the Russian River and a secondary highway (Bohemian Highway);

(2) The boundary follows this secondary highway (Bohemian Highway), southeasterly parallel to Dutch Bill Creek, through the towns of Camp Meeker, Occidental, and Freestone, and then northeasterly to its intersection with an unnamed secondary highway, known locally as Bodega Road (also designated as State Highway 12), at BM 214, as shown on the Valley Ford Quadrangle map.

(3) The boundary follows Bodega Road (State Highway 12) northeasterly 0.9 miles on the Valley Ford map; then onto the Camp Meeker map to its intersection, at BM 486, with Jonive Road to the north and an unnamed light duty road to the south (Barnett Valley Road), T6N, R9W, on the Camp Meeker map.

(4) The boundary follows Barnett Valley Road south 2.2 miles, then east crossing over the Valley Ford map and onto the Two Rock map, to its intersection with Burnside Road, section 17, T6N, R9W.

(5) The boundary follows Burnside Road southeast 3.3 miles to its intersection with an unnamed medium duty road at BM 375, T6N, R9W.

(6) The boundary follows a straight line southeast 0.6 mile to an unnamed 610-foot elevation peak, 1.5 miles southwest of Canfield School, T6N, R9W.

(7) The boundary follows a straight line east-southeast 0.75 mile to an unnamed 641-foot elevation peak 1.4 miles south-southwest of Canfield School, T6N, R9W.

(8) The boundary follows a straight line northeast 0.85 mile to its intersection with an unnamed intermittent stream and Canfield Road; then continues on the straight line northeast 0.3 mile to its intersection with the common Ranges 8 and 9 line, just west of an unnamed unimproved dirt road, T6N.

(9) The boundary follows a straight line southeast 0.5 mile, crossing over the end of an unnamed, unimproved dirt road to an unnamed 524-foot elevation peak, T6N, R8W.

(10) The boundary follows a straight line southeast 0.75 mile to the intersection of an unnamed unimproved dirt road (leading to four barn-like structures) and an unnamed medium-duty road (known locally as Roblar Road), T6N, R8W.

(11) The boundary follows a straight line south 0.5 mile to an unnamed 678-foot elevation peak, T6N, R8W.

(12) The boundary follows a straight line east-southeast 0.8 mile to an unnamed peak with a 599-foot elevation, T5N, R8W.

(13) The boundary follows a straight line east-southeast 0.7 mile to an unnamed peak with a 604-foot elevation, T5N, R8W.

(14) The boundary follows a straight line east-southeast 0.9 mile, onto the Cotati map, to the intersection of a short, unnamed light-duty road leading past a group of barn-like structures and a medium duty road known locally as Meacham Road, T5N, R8W.

(15) The boundary follows Meacham Road north-northeast 0.75 mile to its intersection with Stony Point Road, T5N, R8W.

(16) The boundary follows Stony Point Road southeast 1.1 miles to the point where the 200-foot elevation contour line intersects Stony Point Road, T5N, R8W.

(17) The boundary follows a straight line north-northeast 0.5 mile to the point where an unnamed intermittent stream intersects U.S. 101 (and to the point where the Roblar de la Miseria land grant line crosses), T5N, R8W.

(18) The boundary follows U.S. Route 101 north 4.25 miles to the point where Santa Rosa Avenue exits U.S. Route 101

to the east (approximately 0.5 mile north of the Wilfred Avenue overpass) T6N, R8W.

(19) The boundary follows Santa Rosa Avenue north 1.1 miles to its intersection with Todd Road, crossing on to the Santa Rosa map, T6N, R8W.

(20) The boundary follows Santa Rosa Avenue generally north 5.8 miles, eventually becoming Mendocino Avenue, to its intersection with an unnamed secondary road, locally known as Bicentennial Way, 0.3 mile north-northwest of BM 161 on Mendocino Avenue, section 11, T7N, R8W.

(21) The boundary follows a straight line north 2.5 miles crossing over the 906-foot elevation peak in section 35, T8N, R8W, crossing onto the Mark West Springs map, to its intersection with Mark West Springs Road and the meandering 280-foot elevation line in section 26, T6N, R8W.

(22) The boundary follows the unnamed secondary highway, Mark West Springs Road, on the Sonoma County map, generally north and east, eventually turning into Porter Road and then to Petrified Forest Road, passing BM 545, the town of Mark West Springs, BM 495, and the Petrified Forest area, to its intersection with the Sonoma County-Napa County line.

* * * * *

Signed: August 13, 2008.

Vicky McDowell,

Acting Administrator.

[FR Doc. E8–19327 Filed 8–19–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0497]

RIN 1625–AA01

Special Anchorage Area ''A'', Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to increase the size of the Boston Inner Harbor Special Anchorage Area ''A'' at the entrance to Fort Point Channel in Boston Harbor, Boston, MA at the request of the Boston Harbormaster and the Boston Harbor Yacht Club. This action will provide additional anchorage space and provide a safe and secure anchorage for vessels of not more than 65 feet in length.

DATES: Comments and related material must reach the Coast Guard on or before October 20, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0497 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 Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355 or e-mail *John.J.Mauro@uscg.mil.*

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–2008–0497), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0497) 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), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In 1982, three anchorages were established in response to a request by the Boston Harbormaster. These three anchorages were designated Boston

Inner Harbor A, Boston Inner Harbor B, and Boston Inner Harbor C. When they were created, 39 of 43 comments were in favor of the anchorage establishments. Many of the initial commenters identified themselves as members of the Boston Harbor Sailing Club, a sailing club located in close proximity to the proposed anchorage area at that time. Of the disfavoring groups, the Department of the Army, Corps of Engineers expressed some concern about Anchorage Area ''C'' encroaching on the Fort Point Channel approach. Another commenter complained that Anchorage Area ''A'', extended southward, interfering with the approach to Rowes Wharf. The two remaining commenters represented commercial interests opposed to the Anchorage Areas, especially Anchorage Area ''C''.

A public hearing was held thereafter in which six commenters voiced their support for the Anchorage Area. One commenter, however, expressed concern about the proximity of Anchorage Area ''C'' to the main shipping channel for Boston Harbor. With an average speed of six (6) knots, a large vessel transiting the area could damage closely anchored sailboats. The same commenter also disapproved of the way Anchorage Area ''C'' encroached on the Fort Point Channel. Another commenter complained about Anchorage Area ''A'' and the difficult approach that would be required by a vessel attempting to moor on Rowes Wharf. The final commenter was concerned about the navigational safety of the Fort Point Channel approach, which was reduced by Anchorage Area ''C'', and also agreed with the concerns about the approach to Rowes Wharf.

At that time, in response to the comments received, the Anchorage Areas ''A'' and ''C'' were modified in response to reasonable complaints that were raised by commercial parties. Each of the areas was plotted on a large scale chart providing for greater accuracy. The southern boundary of Anchorage Area ''A'' was moved northward to allow a more favorable approach to Rowes Wharf and the southern boundary of Anchorage Area ''C'' was relocated northward to open up the approach to Fort Point Channel. The eastern boundary of Anchorage Area ''C'' was moved away from the main shipping channel.

At the same time, administration of the anchorage area was given to the Harbormaster of the City of Boston pursuant to local ordinances. The City of Boston was also given charge of installing and maintaining suitable navigational aids to mark the limits of the anchorage area.

In 1985, in response to a request by the Boston Harbormaster, Boston Police Department and the developer of the Rowes Wharf reconstruction project, a modification to the anchorages was deemed to be required because redevelopment of the Rowes Wharf area in Boston would change recreational and commercial vessel traffic patterns in the Rowes Wharf waterfront area. The presence of the existing Anchorage Area B would impede the passage of vessels in and out of Rowes Wharf and would create a navigation safety hazard if vessels were anchored there. Therefore, this modification removed Anchorages A, B and C and established Boston Inner Harbor Anchorage Area ''A''.

Since this time, Boston Harbormasters have permitted the Boston Harbor Sailing Club to establish moorings in Anchorage Area A. The Boston Harbor Sailing Club rents the moorings to customers who then apply to the City of Boston for a permit allowing the mooring. Although the moorings are relatively small, the associated anchoring systems range from 1000 to 4000 pounds.

In addition, when the anchorage was established, the Coast Guard used the North American Datum 1927 (NAD27) as a plotting system. Since then, however, the Coast Guard adopted the North American Datum 1983 (NAD83) for its plotting system. This new system changed the coordinate positions of the anchorages on the charts. In this rulemaking, the Coast Guard intends to update the position of this anchorage using NAD83 coordinates.

When Rowes Wharf was finished, the new wharf had a set of docks attached to it. The current placement of these docks does not allow enough of a fairway for vessels to transit between the anchorage area and the pier facings. Changing the size of the anchorage area will allow this to occur by changing the positions of the buoys.

Discussion of Proposed Rule

The Coast Guard is proposing to increase the size of the Boston Inner Harbor Anchorage Area ''A''. By enlarging Anchorage Area ''A'' and shifting the positions of the buoys, it will correct what is currently an unsafe condition, and allow for the safe passage of vessels between the wharf and the anchorage. This regulation will also allow for the creation of a slightly larger anchorage area. By enlarging the anchorage area, the current problem with boats maintaining a mooring and swinging out into the channel will be alleviated.

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, as the creation of the anchorage modifies the buoys which will align more efficiently with current traffic patterns.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational vessels transiting in the vicinity of the anchorage, the Boston Aquarium, Boston Harbor ferry vessels transiting the local area as well as those vessels transiting into Anchorage Area ''A''.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Eldridge McFadden by mail at United States Coast Guard Sector Boston, 47 Commercial Street, Boston, MA 02109. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD 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 under the instruction that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.

2. Amend § 110.30 by revising (m) to read as follows:

§ 110.30 Boston Harbor, Mass., and adjacent waters.

* * * * *

(m) *Boston Inner Harbor A.* The waters of the western side of Boston Inner Harbor north of the entrance to the Fort Point Channel bounded by the following points beginning at latitude 42°21′32″ N, longitude 071°02′50″ W; thence to latitude 42°21′33″ N, longitude 071°02′44″ W; thence to latitude 42°21′26″ N, longitude 071°02′36″ W; thence to latitude 42°21′26″ N, longitude 071°02′53″ W; thence to point of origin. Datum NAD83.

Note: The area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed. Fixed mooring piles or stakes are prohibited. The anchoring of vessels and placing of temporary moorings will be under the jurisdiction, and at the discretion of the Harbormaster, City of Boston. All moorings shall be so placed that no vessel, when moored, will at any time extend beyond the limits of the area.

Dated: August 5, 2008.

Dale G. Gabel,

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

[FR Doc. E8–19267 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0747]

RIN 1625–AA11

Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterway EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a permanent regulated navigation area on a portion of the Thea Foss and Wheeler-Osgood Waterways, Commencement Bay, Tacoma, Washington. This regulated navigation area would be used to preserve the integrity of a clean sediment cap placed over certain areas of the Thea Foss and Wheeler-Osgood Waterways as part of the remediation process of the Environmental Protection Agency's (EPA) Commencement Bay Nearshore/Tideflats superfund cleanup site. This regulated navigation area would prohibit activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the cap. It would not affect transit or navigation of the area.

DATES: Comments and related material must reach the Coast Guard on or before November 18, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0747 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 ENS Heidi Bevis, U.S. Coast Guard Sector Seattle, Waterways Management Division, at 206–217–6147. 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–2008–0747), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0747) 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 the Waterways Management Division, U.S. Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Thea Foss and Wheeler-Osgood Waterways are part of the Commencement Bay Nearshore/Tideflats Superfund Cleanup Site. The Thea Foss Waterway is the southernmost of the waterways in Commencement Bay, and the Wheeler-Osgood Waterway is a smaller waterway connected to the eastern shoreline of the Thea Foss Waterway at approximately its midpoint. The Thea Foss and Wheeler-Osgood Waterways cleanup encompassed the inner approximately three-fourths of the waterway, with active remediation performed primarily south of the 11th Street Bridge. This site is bounded by numerous publicly and privately owned properties. The City of Tacoma is leading the cleanup and monitoring effort in approximately 80% of the Thea Foss and Wheeler-Osgood Waterways in conjunction with the United States Environmental Protection Agency. A group of private utilities performed the cleanup in the remainder of the waterway.

Remediation activities performed in the Thea Foss and Wheeler-Osgood Waterways included a combination of dredging, placement of enhanced natural recovery material (i.e., approximately 6 inches of clean sand), placement of a thick-layer cap, and natural recovery. These thick-layer caps consist of approximately three feet of sand and gravel and/or riprap and were

placed in various locations within the waterway to contain contaminated sediments. These caps were designed to withstand activities common to a working waterfront. The thick-layer caps cover approximately 30 acres of sediment in the waterway.

Discussion of Proposed Rule

This will be a permanent regulation restricting activities such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the caps. Activities common in the proposed regulated areas include recreational boating, tugboat movement, and shipyard activities. The thick-layer cap areas were designed to be compatible with the activities described above that are associated with a working waterfront. The material used for the caps was chosen to be able to contain underlying sediments without altering the main activities of the working waterway.

Regulatory Evaluation

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. The proposed rule is not ''a significant regulatory action'' because the regulated areas established by the rule would encompass a small area that should not impact commercial or recreational traffic and prohibited activities are not routine for the designated areas.

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 U.S. 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 rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The zone would not have a significant economic impact due to its small area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Hiedi Bevis, U.S. Coast Guard Sector Seattle, Waterways Management Division, at 206–217–6147. The U.S. Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the U.S. Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the U.S. 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 under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. As a proposal to establish a regulated navigation area, this rule meets the criteria outlined in paragraph (34)(g).

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1324 to read as follows:

§ 165.1324 Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterway EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following areas are regulated navigation areas:

(1) All waters of the Thea Foss and Wheeler-Osgood Waterways bounded by a line connecting the following points: Point 1: 47°15′43.0513″ N, 122°26′22.9718″ W; Point 2: 47°15′43.0920″ N, 122°26′20.5400″ W; Point 3: 47°15′42.1625″ N, 122°26′19.0741″ W; Point 4: 47°15′40.9149″ N, 122°26′18.2348″ W; Point 5: 47°15′40.5821″ N, 122°26′19.3051″ W; Point 6: 47°15′38.9184″ N, 122°26′18.1889″ W; Point 7: 47°15′38.4275″ N, 122°26′19.7759″ W. [*Datum:* NAD 1983].

(2) All waters of the Thea Foss and Wheeler-Osgood Waterways bounded by a line connecting the following points: Point 1: 47°15′22.1992″ N, 122°25′57.2126″ W; Point 2: 47°15′22.1465″ N, 122°25′58.5186″ W; Point 3: 47°15′20.8927″ N, 122°25′59.1811″ W; Point 4: 47°15′19.7138″ N, 122°25′59.0136″ W; Point 5: 47°15′18.6957″ N, 122°25′57.4348″ W; Point 6: 47°15′18.9079″ N, 122°25′56.5456″ W. [*Datum:* NAD 1983].

(3) All waters of the Thea Foss and Wheeler-Osgood Waterways south of a line bounded by connecting the following points: Point 1: 47°15′13.9421″ N, 122°26′05.5628″ W; Point 2: 47°15′15.0083″ N, 122°25′55.1405″ W. [*Datum:* NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the cap in the designated regulated navigation area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port (COTP) Puget Sound, upon advice from the U.S. Environmental Protection Agency (USEPA) Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if the COTP Puget Sound determines that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate to Commander (dpw), 13th Coast Guard District, 915 2nd Avenue, Room 3510, Seattle, WA 98174–1067 to facilitate review by USEPA, U.S. Coast Guard, and the Washington State Department of Natural Resources. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Thea Foss and Wheeler-Osgood Waterway Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the U.S. Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: July 28, 2008.

John P. Currier,

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

[FR Doc. E8–19211 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8707–2]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule—Consistency Update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources by the Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Any comments must arrive by September 19, 2008.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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: Cynthia Allen, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background Information

A. Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) At least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements submitted by the Ventura County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What requirements were submitted to update 40 CFR part 55?

1. After review of the requirements submitted by the Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following District requirements applicable to OCS sources:

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

[2] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Rule No.	Name	Adoption or amended date
23	Exemptions from Permit	4/8/08
42	Permit Fees	4/8/08
44	Exemptions Evaluation Fee	4/8/08
74.12	Surface Coating of Metal Parts and Products	4/8/08

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Order defines ''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 or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These rules will not have a significant economic impact on a substantial number of small entities. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed rules contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

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

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

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, (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 laws 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 decided not to use available and applicable voluntary consensus standards.

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not

considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today's regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

List of Subjects in 40 CFR Part 55

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

Dated: July 24, 2008.

Kathleen H. Johnson,

Acting Regional Administrator, Region IX.

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

PART 55—[AMENDED]

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

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

2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(H) to read as follows:

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

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(8) under the heading ''California'' to read as follows:

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

* * * * *

California

(b) * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 04/13/04)
Rule 5 Effective Date (Adopted 04/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 06/14/77)
Rule 10 Permits Required (Adopted 04/13/04)
Rule 11 Definition for Regulation II (Adopted 03/14/06)
Rule 12 Applications for Permits (Adopted 06/13/95)
Rule 13 Action on Applications for an Authority To Construct (Adopted 06/13/95)
Rule 14 Action on Applications for a Permit To Operate (Adopted 06/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 06/13/95)
Rule 19 Posting of Permits (Adopted 05/23/72)
Rule 20 Transfer of Permit (Adopted 05/23/72)
Rule 23 Exemptions from Permits (Adopted 04/08/08)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review—General (Adopted 03/14/06)
Rule 26.1 New Source Review—Definitions (Adopted 11/14/06)
Rule 26.2 New Source Review—Requirements (Adopted 05/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 03/14/06)
Rule 26.6 New Source Review—Calculations (Adopted 03/14/06)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 01/13/98)
Rule 26.11 New Source Review—ERC Evaluation at Time of Use (Adopted 05/14/02)
Rule 26.12 Federal Major Modifications (Adopted 06/27/06)
Rule 28 Revocation of Permits (Adopted 07/18/72)
Rule 29 Conditions on Permits (Adopted 03/14/06)
Rule 30 Permit Renewal (Adopted 04/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79)
Rule 33 Part 70 Permits—General (Adopted 09/12/06)
Rule 33.1 Part 70 Permits—Definitions (Adopted 09/12/06)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 09/12/06)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 03/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42 Permit Fees (Adopted 04/08/08)
Rule 44 Exemption Evaluation Fee (Adopted 04/08/08)
Rule 45 Plan Fees (Adopted 06/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 08/04/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50 Opacity (Adopted 04/13/04)
Rule 52 Particulate Matter-Concentration (Grain Loading) (Adopted 04/13/04)
Rule 53 Particulate Matter-Process Weight (Adopted 04/13/04)

Rule 54 Sulfur Compounds (Adopted 06/14/94)
Rule 56 Open Burning (Adopted 11/11/03)
Rule 57 Incinerators (Adopted 01/11/05)
Rule 57.1 Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)
Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
Rule 68 Carbon Monoxide (Adopted 04/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 09/13/05)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 09/13/05)
Rule 74 Specific Source Standards (Adopted 07/06/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 04/09/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 04/08/08)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102 Source Tests (Adopted 04/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158 Source Abatement Plans (Adopted 09/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220 General Conformity (Adopted 05/09/95)
Rule 230 Notice to Comply (Adopted 11/09/99)

* * * * *

[FR Doc. E8–19336 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 802, 804, 808, 809, 810, 813, 815, 819, 828, and 852

RIN 2900–AM92

VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 and Executive Order 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting. The Public Law and Executive Order authorize the Department of Veterans Affairs (VA) to establish special methods for contracting with service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs). Under this proposed rule, a VA contracting officer could restrict competition in contracting for SDVOSBs or VOSBs under certain conditions. Likewise, sole source contracts with SDVOSBs or VOSBs would be permitted under certain conditions. The proposed rule would implement these special acquisition methods as a change to the VA Acquisition Regulation (VAAR).

DATES: Comments on the proposed rule should be submitted on or before October 20, 2008 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM92—VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Derek Underwood, Acquisition Policy Division (049P1A), Office of Acquisition and Logistics, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, telephone number (202) 461–6865 (not a toll-free number) or e-mail *Derek.Underwood@va.gov.*

SUPPLEMENTARY INFORMATION:

Background

VA's mission is to serve veterans. Buying from SDVOSBs and VOSBs directly supports VA's mission. Supporting service-disabled veterans who own businesses contributes significantly in restoring their quality of life while enhancing transition from active duty to civilian life. Such acquisitions maintain the socioeconomic well-being of the Nation and carry out VA's strategic goals. Section 1.102–2(d) of the Federal Acquisition Regulation (FAR) (codified at 48 CFR chapter 1) provides that the Federal Acquisition System ''must support the attainment of public policy goals adopted by the Congress and the President.'' It is public policy, as expressed in 15 U.S.C. 637 and 644 that SDVOSBs and VOSBs, among others, shall have the maximum practicable opportunity to participate in the

performance of contracts let by any Federal agency.

Sections 502 and 503 of Public Law 109–461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, (codified at 38 U.S.C. 8127 and 8128) contain provisions that authorize VA to create a unique procurement program among Federal agencies. This program would permit VA contracting officers to conduct acquisition actions limited to SDVOSBs or VOSBs for the Department's requirements. The law requires the Secretary to give priority to a small business concern owned and controlled by veterans.

On October 20, 2004, the President issued Executive Order 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting. The Executive Order directs the heads of agencies to significantly increase opportunities for service-disabled veteran businesses in Federal prime contracting and subcontracting actions. To achieve that objective, the Executive Order requires agencies to more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)) through various efforts, including the development of a strategic plan to implement Executive Order 13360. VA has developed its strategic plan, which is posted at the following Internet Web site: *http://www.vetbiz.gov/fpp/fpp.htm.*

VA proposes to amend the VAAR to implement the changes required by 38 U.S.C. 8127 and 8128 and some rulemaking aspects of VA's strategic plan for Executive Order 13360. Specifically, this proposed rule would allow VA contracting officers to:

- Under certain conditions, permit non-competitive sourcing under the simplified acquisition threshold with SDVOSBs or VOSBs.
- Require set-asides for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer has a reasonable expectation that two or more eligible SDVOSBs or VOSBs will submit offers and that the award can be made at a fair and reasonable price that offers the best value to the United States.
- Under certain conditions, permit non-competitive sourcing for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer determines that a fair and reasonable price will be obtained as a result of negotiations for requirements not to exceed $5 million.
- Include evaluation factors in negotiated acquisitions that give preference to SDVOSBs and VOSBs and preference to offerors who propose to include such businesses as subcontractors.
- Require offerors who propose to use SDVOSBs or VOSBs as subcontractors to utilize eligible businesses.
- Require VOSBs participating in the Department's acquisitions to register in VetBiz.gov's Vendor Information Pages (VIP) database and verify that the business meets eligibility requirements.
- Establish a VA Mentor-Protégé Program and give large businesses that participate in the program a preference in the award of VA prime contracts.
- Encourage prime contractors and mentors to assist SDVOSBs and VOSBs in obtaining bonding when required.
- Revise the eligibility definition for ''service-disabled veteran-owned small business concerns'' to include a spouse who obtains ownership rights upon the death of a 100 percent service-disabled veteran or a veteran who died as a direct result of a service-connected injury for a period of 10 years unless the spouse remarries or sells the interest in the business.
- Recommend debarment of any business that willfully or deliberately misrepresents ownership and control of the business for purposes of registering in the VetBiz.gov Vendor Information Pages database or other Federal databases.
- Under certain conditions, authorize Contracting Officers to acquire supplies and services from SDVOSBs and VOSBs in lieu of Federal Prison Industries (FPI) and the Government Printing Office (GPO).

Section 802.101 Definitions

In proposed section 802.101, VA adopts and incorporates various statutory definitions. FAR 2.101 defines ''service-disabled veteran-owned small business (SDVOSB) concern'' and ''veteran-owned small business (VOSB) concern.'' Prime and subcontracting actions conducted under the authority of 38 U.S.C. 8127, as implemented in VAAR subpart 819.70, revise the definition of ''service-disabled veteran-owned small business concern'' and require that SDVOSBs and VOSBs must be registered in the Vendor Information Pages (VIP) and that the ownership and control of such businesses has been verified by VA. In addition, section 8127(h) enables a surviving spouse who obtains ownership rights to a business upon the death of a veteran with a service-connected disability rated at 100 percent, or a veteran who dies as a direct result of a service-connected disability, to have VA treat the business as a ''service-disabled veteran-owned small business'' for a 10-year period after the death of the veteran, unless the surviving spouse remarries, sells the interest in the business or the business outgrows the small business size standards. This section also includes a definition of VIP.

Section 804.1102 Vendor Information Pages

FAR 4.1102 currently requires all businesses to be registered in the Central Contractor Registration (CCR). Proposed section 804.1102 would require VOSBs, including SDVOSBs, to register in the VIP database, available at *http://www.VetBiz.gov,* in order to be eligible to participate in set-asides for SDVOSBs and VOSBs issued by VA contracting officers. In completing registration, businesses would provide information establishing that the business is owned and controlled by eligible parties, according to the criteria defined in 38 U.S.C. 8127 and FAR 19.1403.

Section 808.603 Purchase Priorities

Under certain conditions, this section would authorize contracting officers to purchase supplies and services produced or provided by FPI from eligible SDVOSBs and VOSBs, in accordance with procedures set forth in proposed VAAR subpart 819.70, without seeking a waiver from FPI. We interpret section 8128 and the legislative history to mean that SDVOSBs and VOSBs must receive priority in VA contracting opportunities without regard to other provisions of law concerning contracting preferences. This interpretation conflicts with the current contracting priorities in law, and as implemented in the FAR, for Federal agencies buying from FPI. VA finds that section 8128, being directly applicable solely to VA and providing authority without regard to any other provision of law, requires VA contracting officers to have the authority to override other statutory contracting preferences to provide priority to SDVOSBs and VOSBs to meet VA's socioeconomic goals for such concerns. Therefore, proposed section 808.603 is the only means available to VA to implement the requirement in section 8128 that veterans' small businesses have priority in VA acquisitions that would normally be awarded under FPI.

Section 808.803 Priority for Acquisition of Printing and Related Supplies

This section would authorize contracting officers to acquire government printing from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with

procedures set forth in VAAR subpart 819.70, in lieu of the Government Printing Office (GPO). We interpret section 8128 and the relevant legislative history as authorizing VA to give priority in contracting to SDVOSBs and VOSBs without regard to other provisions of law concerning contracting preferences. This interpretation conflicts with the current contracting priority in law, and as implemented in the FAR, which provides that Federal agencies buying printing services must procure such services from GPO. VA finds that section 8128, being directly applicable solely to VA and providing authority for priority in VA contracting without regard to any other provision of law, requires VA contracting officers to have the authority to override the statutory contracting preference for GPO services and instead provide priority in contracting to SDVOSBs and VOSBs for printing services and related supplies. Therefore, proposed section 808.803 is the only means available to VA to implement section 8128.

Section 809.406–2 Causes for Debarment

FAR 9.406–2 lists several reasons for which a debarring official may initiate a debarment action. Proposed VAAR 809.406–2 adds one additional reason: misrepresentation of status as an SDVOSB or a VOSB, in accordance with section 8127(g).

Section 810.001 Market Research Policy

FAR 10.001 requires agencies to conduct market research on an ongoing basis and to effectively identify the capabilities of small businesses to meet agency requirements. VAAR section 810.001 would establish that, when conducting market research, VA contracting teams shall use the VIP database, in addition to other sources of information.

Section 810.002 Market Research Procedures

This section would require contracting officers to record VIP queries in the solicitation file.

Section 813.106 Soliciting Competition, Evaluation of Quotations or Offers, Award and Documentation

This section would clarify that contracting officers may use other than competitive procedures to enter into a contract with an SDVOSB or VOSB when the amount is less than the simplified acquisition threshold not to exceed $5 million. Contracting officers would give first consideration to SDVOSBs.

Section 813.202 Purchase Guidelines

FAR 13.202(a)(1) provides that, to the extent practicable, open market micro-purchases shall be distributed equitably among qualified suppliers. The set-aside provisions of FAR Part 19 do not apply to micro-purchases. However, in accordance with sections 8127 and 8128, VA would make an exception to this FAR requirement when supplies are available from SDVOSBs or VOSBs. We would add section 813.202 to allow preference for SDVOSB and VOSB sources when making local open market micro-purchases using the purchase card. In such cases, equitable distribution of open market micro-purchases among all qualified suppliers would not be required. Instead, open market micro-purchases would be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable. We believe that this change would assist VA in meeting its statutory goals for award of contracts to SDVOSBs and VOSBs.

Sections 815.304 and 852.215–70 Evaluation Factors and Significant Subfactors

To implement sections 8127 and 8128, VA would add sections 815.304 and 852.215–70 to require VA contracting officers to: (1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs; (2) use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in selecting offers for award; (3) use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders; and (4) consider participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders. VA is particularly interested in receiving comments on the proposed mandatory inclusion of evaluation preferences for SDVOSBs and VOSBs in negotiated acquisitions.

Section 815.304–70 Evaluation Factor Commitments

In accordance with section 8127(a)(4), we propose to require prime contractors who offer to use one or more SDVOSBs or VOSBs as subcontractors in accordance with proposed section 852.215–70, Veteran-Owned Small Business Evaluation Factors, to actually use those subcontractors or to replace any proposed subcontractor who is not used for the specified subcontract with another SDVOSB or VOSB subcontractor. This subsection would be implemented under proposed new sections 815.304–70 and 852.215–71. Further, this subsection would help ensure that SDVOSBs and VOSBs receive subcontract awards under VA prime contracts, as prime contractors will be required to report only utilization of companies appearing in the VIP database as ''verified'' to be owned and controlled by eligible veterans or surviving spouses.

Section 815.304–71 Solicitation Clauses

This section would prescribe insertion of certain contract clauses in acquisitions from SDVOSBs and VOSBs, including section 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, and section 852.215–71, Evaluation Factor Commitments, for applicable solicitations and contracts.

Section 819.201 General Policy

This section would authorize the Secretary to establish goals for each fiscal year for participation in Department contracts by SDVOSBs and VOSBs. Furthermore, in order to establish contracting priority for veteran-owned and -controlled small businesses in accordance with section 8128, the Secretary may decrease other status-specific small business goals set forth by section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) upon consultation with the Administrator of the U.S. Small Business Administration.

Section 819.307 Protests

FAR 19.307 contains instructions for processing protests of status as a SDVOSB concern. Section 8127 contains additional eligibility criteria for VA's processing of protests and authorizes VA to conduct VOSB set-asides. Proposed VAAR section 819.307 would address protest procedures and other information specific to VA's unique acquisition program.

Section 819.704 Subcontracting Plan Requirements

In accordance with section 8127, proposed section 819.704 would require contracting officers to include suggested subcontracting goals in acquisitions that may require a subcontracting plan. To receive subcontracting plan accomplishment credit for subcontracting with SDVOSBs and VOSBs, prime contractors would be

required to use eligible businesses identified in the VIP database.

Section 819.705 Appeals of Contracting Officer Decisions

This section would prescribe procedures for appeals of VA contracting officers' SDVOSB set-aside decisions, VOSB set-aside decisions, and prime contractor credits for subcontracting.

Section 819.709 Contract Clause

This section would require contracting officers to insert the clause in section 852.219–9, Small Business Subcontracting Plan Minimum Requirements, for solicitations and contracts that include the FAR clause at 52.219–9, Small Business Subcontracting Plan.

Subpart 819.70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program

This subpart would establish sole source contracting procedures for acquisitions under $5 million and create a new set-aside program for SDVOSBs and VOSBs.

Subpart 819.71 VA Mentor-Protégé Program

In accordance with paragraph (3)(a) of VA's Executive Order 13360 strategic plan, we propose to establish a SDVOSB mentor-protégé program within VA under new subpart 819.71, consisting of sections 819.7101 through 819.7115, and at sections 852.219–71 and 852.219–72. We propose to establish this program to help SDVOSBs receive developmental support from VA prime contractors in order to increase the base of SDVOSBs eligible to perform VA prime contracts and to participate as subcontractors on VA prime contracts.

Sections 828.106–71, 828.106–72, and 852.228–72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds

In accordance with paragraph (3)(f) of VA's Executive Order 13360 strategic plan, we propose to add new sections 828.106–71, 828.107–72, and 852.228–72, to encourage prime contractors to assist SDVOSBs and VOSBs in obtaining subcontractor performance and payment bonds and to encourage mentor firms to assist protégé SDVOSBs and VOSBs in obtaining acceptable bid, payment, and performance bonds as prime contractors. The ability to obtain acceptable surety bonds is one of the major concerns for small businesses in contracting with the Federal government for construction.

Regulatory Flexibility Act

This regulation may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the law provides that the Secretary shall give priority to small business concerns owned and controlled by veterans. Service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) may benefit from this regulation. Other small businesses may be indirectly affected if a greater portion of VA's small business contracts are awarded to SDVOSBs and VOSBs. However, this regulation may result in an increase in VA contracts awarded to the overall total of small businesses.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 5 U.S.C. 603. Interested parties are invited to submit comments on VA's regulatory flexibility analysis. The analysis is as follows:

1. Description of the reasons why action by the agency is being considered.

These proposed changes to the Veterans Affairs Acquisition Regulation (VAAR) implement sections 502 and 503 of Public Law 109–461, the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127 and 8128). The changes will also implement the rulemaking portions of VA's Strategic Plan for Executive Order 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting (*http://www.vetbiz.gov/fpp/fpp.htm*). VA exists to serve veterans, and buying from SDVOSBs and VOSBs directly supports that mission. Such acquisitions support the socioeconomic well-being of the Nation and support VA's Strategic Goals. The proposed changes to the VA Acquisition Regulation reflect the intent of Congress that VA fulfill its special mission to serve veterans and enable them to realize the American dream that they fought to protect, especially those who became disabled while serving their country.

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

Sections 502 and 503 of Public Law 109–461 require VA to create a unique acquisition program among Federal agencies that permits preferences for SDVOSBs and VOSBs. This proposed rule would permit VA contracting officers to conduct acquisition actions with preferences for SDVOSBs or VOSBs. Specifically, this proposed rule will allow VA contracting officers to:

a. Under certain conditions, permit non-competitive sourcing under the simplified acquisition threshold with SDVOSBs or VOSBs;

b. Require set-asides for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer has a reasonable expectation that two or more eligible SDVOSBs or VOSBs will submit offers and that the award can be made at a fair and reasonable price that offers the best value to the United States;

c. Under certain conditions, permit non-competitive sourcing for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer determines that a fair and reasonable price will be obtained as a result of negotiations for requirements not to exceed $5 million;

d. Include evaluation factors in negotiated acquisitions that give preference to SDVOSBs and VOSBs and preference to offerors who propose to include such businesses as subcontractors;

e. Require offerors who propose to use SDVOSBs or VOSBs as subcontractors to utilize eligible businesses;

f. Require VOSBs participating in the Department's acquisitions to register in VetBiz.gov's Vendor Information Pages (VIP) database and verify that the business meets eligibility requirements;

g. Establish a VA Mentor-Protégé Program and give large businesses that participate in the program a preference in the award of VA prime contracts;

h. Encourage prime contractors and mentors to assist SDVOSBs and VOSBs in obtaining bonding when required;

i. Recommend debarment of any business that willfully or deliberately misrepresents ownership and control of the business for purposes of registering in the VetBiz.gov VIP database or other federal databases; and

j. Under certain conditions, acquire supplies and services from SDVOSBs and VOSBs in lieu of FPI and GPO.

3. Description of, and, where feasible, estimate of the number of small entities to which the proposed rule will apply.

VA cannot accurately determine how many concerns would be participating in these SDVOSB/VOSB contract awards because there is insufficient data on SDVOSBs/VOSBs that are ready and able to perform under VA requirements to support a reasonable estimate.

To establish the likely number of SDVOSBs or VOSBs that may benefit from VA's unique procurement authority there are two principal data sources, the Central Contractor

Registration (CCR) database, in which a business must be listed to receive a payment from a Federal agency, and VA's VetBiz.gov VIP database. A CCR Dynamic Small Business Search query conducted on March 13, 2008, returned 40,163 VOSBs, including 11,465 SDVOSBs. A VIP query returned 10,695 VOSBs, including 6,354 SDVOSBs. The VIP database requires that businesses answer eligibility questions before they are permitted to register their business. The CCR is a self-representation database.

Under this proposed rule, VA contracting teams will be required to give priority consideration to SDVOSBs and VOSBs when using other contracting programs, like set-asides for the Historically Underutilized Business (HUB) Zone Program or 8(a) Business Development Program reserved actions or the Small Business Set-aside program. A CCR Dynamic Small Business Search conducted on March 13, 2008, returned 13,848 active HUBZone firms. Of this population, 2,565, or 19 percent, are also VOSBs. A search of active 8(a) businesses identified 9,822 current firms, which includes 1,285 VOSBs, or 14 percent of the total population. There are 63,395 woman-owned small businesses (WOSBs) in the Central Contractor Registration, of which 4,471 appear to also be VOSBs. VA notes that the SBA is in the process of establishing a WOSB set-aside program, making the percentage of WOSBs who are also VOSB eligible of interest to the Department.

There are some concerns that the proposed rule will displace business opportunities for non-veteran-owned businesses, based on the following speculations:

- Additional businesses may be opened by veterans seeking to participate in the sole source or set-aside procurement actions;
- Veteran-owned small businesses not currently in the Federal market may be expected to explore selling to VA;
- The VOSB population may increase as these businesses register in the VetBiz.gov VIP database;
- Public Law 109–461 procurement authority also requires that VA's large prime contractors use eligible businesses in order to receive subcontracting program credit for VOSBs and SDVOSBs; and
- On June 6, 2008, the Office of Federal Procurement Policy issued new guidance regarding Interagency Agreements. Under this policy, other Federal agencies with which VA executes such agreements will be governed by the procurement rules contained in this regulation. In FY 2007, interagency acquisitions were approximately $15,444,709.39, or 0.13% of total contract dollars.

The Department of Veterans Affairs has a strong commitment to supporting all types of small businesses, as demonstrated in the procurement chart below:

	FY 2006		FY 2007	
	($)	(%)	($)	(%)
Total Procurement	10,282,566,304		11,784,896,886	
Total Small Business	3,028,055,461	29.45	3,878,901,724	32.91
Small and Disadvantaged Business	507,442,123	4.93	603,502,602	5.12
8(a)	402,659,565	3.92	406,996,187	3.45
Woman-Owned Small Business	513,104,216	4.99	573,355,381	4.87
Veteran-Owned Small Business	666,825,417	6.49	1,193,853,547	10.13
Service-Disabled Veteran-Owned Small Business	348,077,159	3.39	818,698,785	6.95
HUBZone	336,856,889	3.28	381,875,493	3.24

The preliminary Total Small Business procurement for FY2007 was $3,878,901,724.00 or 32.91%. Procurement totals for SDVOSBs and VOSBs were $2,012,552,332.00 or 17.08% and procurement totals for non-veteran-owned businesses were $1,965,729,663.00 or 16.68%, a mere .40% difference. Although, SDVOSBs and VOSBs gained 7.2% of procurements from FY2006 to FY2007 and non-veteran-owned businesses lost .44% of procurements, the non-veteran-owned businesses still received increased procurement dollars totaling $205,666,870.00 from FY2006 to FY2007. Assuming this trend and/or this new procurement authority does increase procurement percentages for SDVOSBs and VOSBs and the procurement percentages for non-veteran-owned businesses decrease, as previously demonstrated from FY2006 to FY2007, the contracting dollars and/or opportunities for non-veteran-owned businesses were not adversely impacted economically. VA also estimates that it would be unrealistic for SDVOSBs and VOSBs to absorb the entire 16.68% of procurements that are currently being awarded to the non-veteran-owned businesses. The SDVOSBs and VOSBs are more likely to sub-contract with the non-veteran-owned businesses with existing contracts rather than investing in costly business expansions. Based on prior procurement trends, VA believes there would not be an adverse economic impact on non-veteran-owned businesses, but requests comment from the public on other possible impacts this rule may have on small entities.

This rule also creates a Mentor-Protégé Program for SDVOSBs and VOSBs. It is the expectation that at such time as this rule is finalized, those Protégé entities would directly benefit from the forms of Mentoring described in this proposed rule. VA believes there would not be an adverse economic impact on small contractors or subcontractors, but requests comment from the public on other possible impacts this rule may have on small entities. Comments will be used as a factual basis upon which VA would certify that this rule will not have a significant economic impact on a substantial number of small entities.

For the reasons outlined above, given the relatively small number of businesses owned and controlled by veterans in the Federal marketplace and with the understanding that this rule would apply only to VA and its large prime contractors, VA believes this rule would not have a major impact on small entities doing business in the Federal marketplace.

VA welcomes comments concerning the potential number of small entities that could become eligible under this rule. VA also specifically requests comments concerning the rule's impact on small entities that are not VOSBs.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

There are two categories of coverage in this proposed rule that could potentially require the collection of information from contractors. VA will collect information from prime contractors seeking a preference for subcontracting with SDVOSBs or VOSBs. That information would include identity of the SDVOSBs or VOSBs, the approximate dollar value of the proposed subcontracts, and confirmation that the proposed subcontractors are eligible SDVOSBs or VOSBs as verified by the VetBiz.gov VIP database. VA estimates the cost to an individual business to be less than $100.00 for 70–75% of the businesses seeking verification, and the average cost to the entire population of veterans seeking to become verified is less than $325.00 on average. VA also will collect information in conjunction with preferences associated with the VA Mentor-Protégé Program. That information would include the program agreement, developmental plan, and reports on the success of the program.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The VAAR (48 CFR chapter 8) supplements the FAR (48 CFR chapter 1). This proposed rule would affect 48 CFR parts 802, 804, 808, 809, 810, 813, 815, 819, 828, and 852 and corresponding parts of the FAR.

6. Description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and which would minimize any significant economic impact of the proposed rule on small entities. This proposed rule is designed to benefit SDVOSBs and VOSBs. There are no alternatives which would accomplish the stated objectives of sections 502 and 503 of Public Law 109–461 to give contracting priority to SDVOSBs and VOSBs.

Executive Order 12866

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

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

Unfunded Mandates

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

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), collections of information are contained in this proposed rule. These collections are contained in new sections that were not previously contained in the VAAR. This notice is to obtain an OMB control number for these new sections. As required under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Comments on the collection of information should be submitted to OMB, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, with copies to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AM92.''

There are categories of coverage in this proposed rule that could potentially require the collection of information from contractors: (1) Section 852.215–70, Veteran-Owned Small Business Evaluation Factors; and (2) subpart 819.71, VA Mentor-Protégé Program, specifically sections 819.7101 through 819.7115 and the related clauses at sections 852.219–71 and 852.219–72. There is no information available upon which to judge the impact of these PRA requirements, but since the provisions are limited to SDVOSBs and VOSBs, rather than to all small businesses, collection efforts are estimated to be minimal.

Title and section number: 852.215–70, Veteran-Owned Small Business Evaluation Factors.

Summary of collection of information: VA is proposing to give preference to prime contractors who offer to subcontract with SDVOSBs or VOSBs. VA must collect information from offerors regarding: (1) Proposed SDVOSB and VOSB subcontractors; (2) the approximate dollar value of the proposed subcontracts; and (3) eligibility of the proposed subcontractors as verified in VetBiz.gov VIP database (*http://www.VetBiz.gov*).

Description of need for information and proposed use of information: The information is submitted on a voluntary basis by those offerors who wish to qualify for this evaluation factor. The information will be used by the contracting officer to determine whether or not the offeror qualifies for extra credit in the selection of the contract awardee. Those offerors who qualify will be afforded a preference in the selection.

Description of likely respondents: Any offeror, on a negotiated solicitation that includes the applicable evaluation factor, who intends to subcontract with one or more SDVOSBs or VOSBs and who wishes to obtain a preference in the award selection.

Estimated number of respondents: 125.

Estimated frequency of responses: 1 response for each solicitation.

Estimated average burden per collection: 5 minutes.

Estimated total annual reporting and recordkeeping burden: 10 hours.

Title and section number: Subpart 819.71, VA Mentor-Protégé Program, subpart 819.71's related sections

819.7101 through 819.7115, and the related clauses at section 852.219–71, VA Mentor-Protégé Program, and section 852.219–72, Evaluation Factor for Participation in the VA Mentor-Protégé Program.

Summary of collection of information: VA is proposing to institute a Mentor-Protégé Program, whereby a large business agrees to provide developmental support to a VOSB or SDVOSB. VA must approve the Mentor-Protégé Agreement entered into by the two parties, and VA requires both parties to report on the success of the program. Mentors can qualify for additional preference on negotiated solicitations by furnishing evidence of participation in the program with their offer.

Description of need for information and proposed use of information: The information is needed for the review and evaluation of mentor applications for realism, validity, and accuracy of provided information and for conducting a mid-term evaluation at the mid-point interval to measure protégé progress against the developmental plan contained in the approved agreement. The information will also be used to evaluate the status of a business as a participant in VA's Mentor-Protégé Program for possible credit in negotiated contracts.

Description of likely respondents: Large business prime contractors and SDVOSBs or VOSBs.

Estimated number of respondents: 50.

Estimated frequency of responses: Each protégé program participant will be required to submit 3 sets of data consisting of the application and the mid- and end-term reports. Each mentor program participant will be required to submit 4 sets of data consisting of the application, the mid- and end-term reports, and, when submitting an offer, information to verify their participation in the program in order to receive evaluation credit.

Estimated average burden per collection: 1 hour weighted average per data submission.

Estimated total annual reporting and recordkeeping burden: 200 hours (4 data submissions @ 1 hour each times 50 program participants).

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

OMB is required to make a final decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

List of Subjects

48 CFR Parts 802, 804, 809, 810, 813, and 815

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 819

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small business, Veterans.

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: April 21, 2008.

James B. Peake,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on August 15, 2008.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 48 CFR Chapter 8 as follows:

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

Subchapter A—General

PART 802—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 802 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

2. Section 802.101 is amended by adding in alphabetical order the following terms:

802.101 Definitions.

* * * * *

Service-disabled veteran-owned small business concern (SDVOSB) has the same meaning as defined in FAR Part 2.101, except for businesses participating in set-asides or subcontracts authorized by VAAR subpart 819.70. These businesses must be listed as verified on the Vendor Information Pages (VIP) at *http://www.vetbiz.gov.* In addition, some businesses may be owned and controlled by a surviving spouse.

* * * * *

Surviving Spouse means an individual who has been listed in the Department of Veterans Affairs' (VA) Veterans Benefits Administration (VBA) database of veterans and family members. To be eligible for inclusion in the VetBiz.gov VIP database, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under Federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability rating or the veteran died as a direct result of a service-connected disability.

* * * * *

Vendor Information Pages (VIP) means the VetBiz.gov Vendor Information Pages at *http://www.vetbiz.gov.*

Veteran-owned small business concern (VOSB) has the same meaning as defined in FAR Part 2.101, except for businesses participating in set-asides or subcontracts authorized by VAAR Part 819.7001. These businesses must be

listed as verified on the VetBiz.gov VIP database.

* * * * *

PART 804—ADMINISTRATIVE MATTERS

3. The authority citation for part 804 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

4. Section 804.1102 is added to read as follows:

804.1102 Vendor Information Pages (VIP) Database.

In addition to registering in the Central Contractor Registration (CCR), all VOSBs, including SDVOSBs, must register in the VIP database, available at *http://www.VetBiz.gov,* to be eligible to participate in VA's Veteran-owned Small Business prime contracting and subcontracting opportunities programs.

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

5. The authority citation for part 808 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

6. Subpart 808.6 and section 808.603 are added to read as follows:

Subpart 808.6—Acquisition From Federal Prison Industries, Inc. (FPI)

808.603 Purchase priorities.

Contracting officers may purchase supplies and services produced or provided by FPI from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with procedures set forth in VAAR subpart 819.70, without seeking a waiver from FPI, in accordance with 38 U.S.C. 8128, Small business concerns owned and controlled by veterans: Contracting priority.

Subpart 808.8—Acquisition of Printing and Related Supplies

7. Section 808.803 is added to read as follows:

808.803 Priority for acquisition of printing and related supplies.

Contracting officers may acquire government printing from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with procedures set forth in VAAR subpart 819.70, in lieu of the Government Printing Office (GPO), in accordance with 38 U.S.C. 8128, small business concerns owned and controlled by veterans: Contracting priority (See FAR 8.802(a)(4)).

PART 809—CONTRACTOR QUALIFICATIONS

8. The authority citation for part 809 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

9. Section 809.406–2 is added to read as follows:

809.406–2 Cause for debarment.

Misrepresentations of VOSB or SDVOSB eligibility may result in action taken by VA officials to debar the business concern for a period not to exceed 5 years from contracting with VA as a prime contractor or a subcontractor.

10. Part 810 is added to read as follows:

PART 810—MARKET RESEARCH

Sec.
810.001 Market research policy.
810.002 Market research procedures.

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

810.001 Market research policy.

When conducting market research, VA contracting teams shall use the VIP database, at *http://www.VetBiz.gov,* in addition to other sources of information.

810.002 Market research procedures.

Contracting officers shall record VIP queries in the solicitation file by printing the results of the search(es) along with specific query used to generate the search(es).

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

11. The authority citation for part 813 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

12. Section 813.106 is revised to read as follows:

813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

Contracting officers may use other than competitive procedures to enter into a contract with an SDVOSB or VOSB when the amount is less than the simplified acquisition threshold. Contracting officers shall give first consideration to SDVOSBs.

13. Section 813.202 is added to read as follows:

813.202 Purchase guidelines.

Open market micro-purchases shall be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable.

PART 815—CONTRACTING BY NEGOTIATION

14. The authority citation for part 815 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

15. Section 815.304 is added to read as follows:

815.304 Evaluation factors and significant subfactors.

(a) In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

16. Section 815.304–70 is added to read as follows:

815.304–70 Evaluation factor commitments.

(a) VA contracting officers shall:

(1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(2) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in selecting offers for award;

(3) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders; and

(4) Consider participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with the clause at 852.215–70, Service-Disabled Veteran-owned and Veteran-owned Small Business Evaluation Factors, the contracting officer shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

17. Section 815.304–71 is added to read as follows:

815.304–71 Solicitation provision and clause.

(a) The contracting officer shall insert the provision at 852.215–70, Service-Disabled Veteran-owned and Veteran-owned Small Business Evaluation Factors, in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215–71, Evaluation Factor Commitments, in solicitations and contracts that include the clause at 852.215–70, Service-Disabled Veteran-owned and Veteran-owned Small Business Evaluation Factors.

PART 819—SMALL BUSINESS PROGRAMS

18. The authority citation for part 819 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); 48 CFR 1.301–1.304; and 15 U.S.C. 637(d)(4)(E).

Subpart 819.2—Policies

19. Section 819.201 is revised to read as follows:

819.201 General policy.

The Secretary shall establish goals for each fiscal year for participation in Department contracts by SDVOSBs and VOSBs. In order to establish contracting priority for veteran owned and controlled small businesses in accordance with 38 U.S.C. 8128, the Secretary may decrease other status-specific small business goals set forth by section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) upon consultation with the Administrator of the U.S. Small Business Administration.

20. Section 819.307 is added to read as follows:

819.307 Protests.

For acquisitions under the authority of VAAR part 819.70, regarding eligibility of SDVOSB and VOSB concerns, contracting officers shall forward all protests to the Associate Administrator for Government Contracting AA/GC, U.S. Small Business Administration (ATTN: Veterans Business Program Protest), 409 3rd Street, SW., Washington, DC 20416, for disposition.

21. Section 819.704 is added to read as follows:

819.704. Subcontracting plan requirements.

(a) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA SDVOSB prime contracting goal for the total value of planned subcontracts.

(b) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA VOSB prime contracting goal for the total value of all planned subcontracts.

(c) VA's Office of Small and Disadvantaged Business Utilization (OSDBU) shall review all prime contractors' subcontracting plan achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) above, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in VAAR 804.1102.

22. Section 819.705 is added as follows:

819.705 Appeal of Contracting Officer Decisions.

(a) Acquisitions not exceeding the SAT and sections 819.7007 and 819.7008 are excluded from this section.

(b) When an interested party intends to appeal a contracting officer's decision to not use the set-aside authority contained in VAAR 819.70, the party shall notify the contracting officer, in writing, of its intent to challenge the decision. The contracting officer has 5 working days to reply to the challenge by either revising the strategy or indicating the rationale for not setting-aside the requirement. Upon receipt of the decision, the interested party may appeal to the Head of the Contracting Activity (HCA). Such appeal shall be filed within 5 working days of receipt of the contracting officer's decision. The HCA has 5 working days to respond to the appeal. The contracting officer shall suspend action on the acquisition unless the HCA makes a written determination that urgent circumstances exist which would significantly affect the interests of the Government. The decision of the HCA shall be final.

(c) Prime contractors submitting businesses declared ineligible for credit in SDVOSB and/or VOSB subcontracting plans may appeal to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), within 5 working days of receipt of information declaring their subcontractor ineligible. The Director, OSDBU, shall have 5 working days to respond. The decision of the Director, OSDBU, may be appealed to the Senior Procurement Executive (SPE) within 5 working days. The SPE shall have 15 working days to respond and that decision shall be final.

23. Section 819.709 is added to read as follows:

819.709 Contract clause.

The contracting officer shall insert the clause at 852.219–9, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include the FAR clause at 52.219–9, Small Business Subcontracting Plan.

24. Subpart 819.70 is revised to read as follows:

Subpart 819.70—Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program

819.7001 General.

(a) The Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127) created an acquisition program for small business concerns owned and controlled by service-disabled veterans and those owned and controlled by veterans for VA.

(b) The purpose of the program is to provide contracting assistance to SDVOSBs and VOSBs.

819.7002 Applicability.

This subpart applies to VA contracting activities and to its prime contractors.

819.7003 Eligibility.

(a) Eligibility of SDVOSBs and VOSBs continues to be governed by the Small Business Administration regulations, 13 CFR subparts 125.8 through 125.13, as well as the FAR, except where expressly directed otherwise by the VAAR, and 38 CFR verification regulations for SDVOSBs and VOSBs.

(b) At the time of submission of offer, the offeror must represent to the contracting officer that it is a—

(1) Service-disabled veteran-owned small business concern or veteran-owned small business concern;

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and

(3) Verified for eligibility in the Vendor Information Pages database.

(c) A joint venture may be considered an SDVOSB or VOSB concern if—

(1) At least one member of the joint venture is an SDVOSB or VOSB concern, and makes the representations in paragraph (b) of this section;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the size standard explanation of Affiliates in FAR 19.101; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), modified to include veteran-owned small businesses where this CFR section refers to SDVOSB concerns.

(d) Any SDVOSB or VOSB concern (nonmanufacturer) must meet the requirements in FAR 19.102(f) to receive a benefit under this program.

819.7004 Contracting order of priority.

In determining the acquisition strategy applicable to an acquisition, the contracting officer shall consider, in the following order of priority, contracting preferences that ensure contracts will be awarded:

(a) To SDVOSBs;

(b) To VOSB, including but not limited to SDVOSBs;

(c) Pursuant to—

(1) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(2) The Historically-Underutilized Business Zone (HUBZone) Program (15 U.S.C. 657a); and

(d) Pursuant to any other small business contracting preference.

819.7005 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 819.7007 and 819.7008, the contracting officer shall set-aside an acquisition for competition restricted to SDVOSB concerns upon a reasonable expectation that—

(1) Offers will be received from two or more eligible SDVOSB concerns; and

(2) Award will be made at a fair and reasonable price.

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure—

(1) Eligibility is extended to businesses owned and operated by surviving spouses; and

(2) Businesses are registered and verified as eligible in Vendor Information Pages prior to making an award.

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible SDVOSB concern in response to a SDVOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, if appropriate.

819.7006 Veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 819.7007 and 819.7008, the contracting officer shall set aside an acquisition for competition restricted to VOSB concerns upon a reasonable expectation that—

(1) Offers will be received from two or more eligible VOSB concerns; and

(2) Award will be made at a fair and reasonable price.

(b) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VOSB concern in response to a VOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible VOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs, as appropriate.

(c) When conducting VOSB set-asides, the contracting officer shall ensure the business is registered and verified as eligible in the Vendor Information Pages prior to making an award.

819.7007. Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer may award contracts to SDVOSB concerns on a sole source basis provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The requirement is synopsized in accordance with FAR part 5;

(3) The SDVOSB concern has been determined to be a responsible contractor with respect to performance; and

(4) Award can be made at a fair and reasonable price.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one service-disabled veteran-owned small business concern is available to meet the requirement is not required. No protest is authorized in connection with the issuance or proposed issuance of a contract under this section, on the basis that more than one service-disabled veteran-owned small business concern is available to meet the requirement.

(c) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the Vendor Information Pages prior to making an award.

819.7008 Sole source awards to veteran-owned small business concerns.

(a) A contracting officer may award contracts to VOSB concerns on a sole source basis provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The requirement is synopsized in accordance with FAR part 5;

(3) The VOSB concern has been determined to be a responsible contractor with respect to performance;

(4) Award can be made at a fair and reasonable price; and

(5) No responsible SDVOSB concern has been identified.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one veteran-owned small business concern is available to meet the requirement is not required. No protest is authorized in connection with the issuance or proposed issuance of a contract under this section, on the basis that more than one veteran-owned small business concern is available to meet the requirement.

(c) When conducting a VOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the Vendor Information Pages prior to making an award.

819.7009 Contract clauses.

The contracting officer shall insert the clause 852.219–10, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside or 852.219–11, Notice of Total Veteran-Owned Small Business Set-Aside in solicitations and contracts for acquisitions under this subpart.

25. Subpart 819.71, consisting of sections 819.7101 through 819.7115, is added to read as follows:

Subpart 819.71—VA Mentor-Protégé Program

Sec.

819.7101 Purpose.
819.7102 Definitions.
819.7103 Non-affiliation.
819.7104 General policy.
819.7105 Incentives for mentor participation.
819.7106 Eligibility of Mentor and Protégé firms.
819.7107 Selection of Protégé firms.
819.7108 Application process.
819.7109 VA review of application.
819.7110 Developmental assistance.
819.7111 Obligations under the Mentor-Protégé Program.
819.7112 Internal controls.
819.7113 Reports.
819.7114 Measurement of program success.

819.7115 Solicitation provisions.

Authority: 38 U.S.C. 501.

Subpart 819.71—VA Mentor-Protégé Program

819.7101 Purpose.

The VA Mentor-Protégé Program is designed to assist service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) in enhancing their capabilities to perform contracts and subcontracts for VA. The Mentor-Protégé Program is also designed to improve the performance of VA contractors and subcontractors by providing developmental assistance to Protégé entities, fostering the establishment of long-term business relationships between SDVOSBs, VOSBs and prime contractors, and increasing the overall number of SDVOSBs and VOSBs that receive VA contract and subcontract awards. A firm's status as a Protégé under a VA contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts.

819.7102 Definitions.

(a) A *Mentor* is a prime contractor that elects to promote and develop SDVOSB and/or VOSB subcontractors by providing developmental assistance designed to enhance the business success of the Protégé. A mentor may be a large or small business concern.

(b) *OSDBU* is the Office of Small and Disadvantaged Business Utilization. This is the VA office responsible for administering, implementing and coordinating the Department's small business programs, including the Mentor-Protégé Program.

(c) *Program* refers to the VA Mentor-Protégé Program as described in this Chapter.

(d) *Protégé* means a service-disabled veteran-owned small business or veteran-owned small business, as defined in VAAR 802.101, which meets Federal small business size standards in its primary North American Industrial Classification System (NAICS) code and which is the recipient of developmental assistance pursuant to a Mentor-Protégé agreement.

819.7103 Non-affiliation.

A Protégé firm will not be considered an affiliate of a Mentor firm solely on the basis that the Protégé firm is receiving developmental assistance from the Mentor firm under VA's Mentor-Protégé Program. The determination of affiliation is a function of the Small Business Administration.

819.7104 General policy.

(a) To be eligible, Mentors and Protégés must not be listed on the Excluded Parties List System, located at *http://www.epls.gov*. Mentors will provide appropriate developmental assistance to enhance the capabilities of Protégés to perform as prime contractors and/or subcontractors.

(b) VA reserves the right to limit the number of participants in the program in order to ensure its effective management of the Mentor-Protégé Program.

819.7105 Incentives for prime contractor participation.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(e), VA is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. FAR 19.202–1 provides additional guidance.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in 819.7110 to fulfill the terms of their agreement(s) with a Protégé firm(s), are not reimbursable as a direct cost under a VA contract. If VA is the Mentor's responsible audit agency under FAR 42.703–1, VA will consider these costs in determining indirect cost rates. If VA is not the responsible audit agency, Mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to subparagraph (b) of this section, contracting officers may give Mentors evaluation credit under 852.219–52, Evaluation Factor for Participation in the VA Mentor-Protégé Program, considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing Mentor-Protégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under FAR 15.305(a)(2)(v) and determining contractor responsibility 19.705–5(a)(1).

(d) OSDBU Mentoring Award. A non-monetary award will be presented annually to the Mentoring firm providing the most effective developmental support of a Protégé. The Mentor-Protégé Program Manager will recommend an award winner to the OSDBU Director.

(e) OSDBU Mentor-Protégé Annual Conference. At the conclusion of each year in the Mentor-Protégé Program, Mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on Program progress.

819.7106 Eligibility of Mentor and Protégé firms.

Eligible business entities approved as Mentors may enter into agreements (hereafter referred to as ''Mentor-Protégé Agreement'' or ''Agreement'' and explained in 819.7108) with eligible Protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of Protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as Mentors. Protégés may participate in the Program in pursuit of a prime contract or as subcontractors under the Mentor's prime contract with VA, but are not required to be a subcontractor to a VA prime contractor or be a VA prime contractor.

(a) Eligibility. A Mentor: (1) May be either a large or small business entity;

(2) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and

(3) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) Eligibility. A Protégé:

(1) Must be a service-disabled veteran-owned small business or veteran-owned small business as defined in VAAR 802.101;

(2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

(c) Protégés may have multiple Mentors. Protégés participating in Mentor-Protégé programs in addition to VA's Program should maintain a system for preparing separate reports of mentoring activity so that results of VA's Program can be reported separately from any other agency program.

(d) A Protégé firm shall self-represent to a Mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the VetBiz.gov Vendor Information Pages database. Protégés must maintain verified status throughout the term of the Mentor-

Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

819.7107 Selection of Protégé firms.

(a) Mentor firms will be solely responsible for selecting Protégé firms. Mentors are encouraged to select from a broad base of service-disabled veteran-owned small business or veteran-owned small business firms whose core competencies support VA's mission; and choose SDVOSB and/or VOSB protégés in addition to firms with whom they have established business relationships.

(b) Mentors may have multiple Protégés. However, to preserve the integrity of the Program and assure the quality of developmental assistance provided to Protégés, VA reserves the right to limit the total number of Protégés participating under each Mentor firm for the Mentor-Protégé Program.

(c) The selection of Protégé firms by Mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a Mentor shall be handled in accordance with the Federal Acquisition Regulation (FAR) and the Small Business Administration regulations.

819.7108 Application process.

(a) Firms interested in becoming approved Mentor-Protégé participants must submit a joint written VA Mentor-Protégé Agreement to the VA OSDBU for review and approval. The proposed Mentor-Protégé Agreement will be evaluated on the extent to which the Mentor plans to provide developmental assistance. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support.

(b) The Mentor-Protégé Agreement must contain:

(1) Names, addresses, phone numbers, and e-mail addresses (if available) of the Mentor and Protégé firm(s) and a point of contact for both Mentor and Protégé who will oversee the agreement;

(2) A statement from the Protégé firm that the firm is currently eligible as a SDVOSB or VOSB to participate in VA's Mentor-Protégé Program;

(3) A description of the Mentor's ability to provide developmental assistance to the Protégé and the type of developmental assistance that will be provided, to include a description of the types and dollar amounts of subcontract work, if any, that may be awarded to the Protégé firm;

(4) Duration of the Agreement, including rights and responsibilities of both parties (Mentor and Protégé), with bi-annual reviews;

(5) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the Mentor or the Protégé to notify the other firm and VA OSDBU in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(6) A schedule with milestones for providing assistance;

(7) Criteria for evaluation of the Protégé's developmental success;

(8) A plan addressing how the Mentor will increase the quality of the Protégé firm's technical capabilities and contracting and subcontracting opportunities;

(9) An estimate of the total cost of the planned mentoring assistance to be provided to the Protégé;

(10) An agreement by both parties to comply with the reporting requirements of VAAR 819.7113;

(11) A plan for accomplishing unfinished work should the agreement be voluntarily cancelled;

(12) Other terms and conditions, as appropriate; and

(13) Signatures and date(s).

(c) The Agreement defines the relationship between the Mentor and the Protégé firms only. The Agreement does not create any privity of contract between the Mentor and VA or the Protégé and VA.

819.7109 VA review of application.

(a) VA OSDBU will review the information to establish the Mentor and Protégé eligibility and to ensure that the information that is in section 819.7108 is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDBU completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will provide a copy of the Mentor-Protégé Agreement to the VA contracting officer for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the Mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDBU will notify the Mentor and Protégé and request correction of deficiencies to be provided within 15 days.

819.7110 Developmental assistance.

The forms of developmental assistance a Mentor can provide to a Protégé include, but are not limited to, the following:

(a) Guidance relating to—

(1) Financial management;

(2) Organizational management;

(3) Overall business management/planning;

(4) Business development; and

(5) Technical assistance.

(b) Loans.

(c) Rent-free use of facilities and/or equipment.

(d) Property.

(e) Temporary assignment of personnel to a Protégé for training.

(f) Any other types of permissible, mutually beneficial assistance.

819.7111 Obligations under the Mentor-Protégé Program.

(a) A Mentor or Protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract.

(b) Mentors and protégés shall submit reports to VA OSDBU in accordance with 819.7113.

819.7112 Internal controls.

(a) OSDBU will oversee the Program and will work cooperatively with relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances applicable to the Program. These controls will include:

(1) Reviewing and evaluating Mentor applications for validity of the provided information;

(2) Reviewing bi-annual progress reports submitted by Mentors and Protégés on Protégé development to measure Protégé progress against the plan submitted in the approved Agreement;

(3) Reviewing and evaluating financial reports and invoices submitted by the Mentor to verify that VA is not charged by the Mentor for providing developmental assistance to the Protégé; and

(4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to insure the effective management of the Program.

(b) VA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in VA's best interest. The rescission shall be in writing and sent to the Mentor and Protégé after approval by the OSDBU Director. Rescission of an Agreement does not change the terms of any subcontract between the Mentor and the Protégé.

819.7113 Reports.

(a) Mentor and Protégé entities shall submit to VA's Office of Small and Disadvantaged Business Utilization bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

(1) Specific actions taken by the Mentor during the evaluation period to increase the participation of their Protégé(s) as suppliers to VA, other government agencies and to commercial entities;

(2) Specific actions taken by the Mentor during the evaluation period to develop technical and administrative expertise of a Protégé as defined in the Agreement;

(3) The extent to which the Protégé has met the developmental objectives in the Agreement;

(4) The extent to which the Mentor's participation in the Mentor-Protégé Program impacted the Protégé'(s') ability to receive contract(s) and subcontract(s) from private firms and Federal agencies other than VA; and, if deemed necessary;

(5) Input from the Protégé on the nature of the developmental assistance provided by the Mentor.

(b) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor'(s') performance in the Program.

(c) In addition to the written progress report in paragraph (a) of this section, at the mid-term point in the Mentor-Protégé agreement, the Mentor and the Protégé shall formally brief the VA OSDBU regarding program accomplishments as pertains to the approved agreement.

(d) Mentor and Protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

819.7114 Measurement of program success.

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the quality of the technical capabilities of the protégé firm.

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program attributable to the Mentor-Protégé relationship (under VA contracts, contracts awarded by other Federal agencies and under commercial contracts.)

819.7115 Solicitation provisions.

(a) Insert the provision at 852.219–71, VA Mentor-Protégé Program, in solicitations that include the FAR clause at 52.219–9, Small Business Subcontracting Plan.

(b) Insert the provision at 852.219–72, Evaluation Factor for Participation in the VA Mentor-Protégé Program, in solicitations that include an evaluation factor for participation in VA's Mentor-Protégé Program in accordance with 819.7105 and that also include the FAR clause at 52.219–9, Small Business Subcontracting Plan.

PART 828—BONDS AND INSURANCE

26. The authority citation for part 828 is revised to read as follows:

Authority: 38 U.S.C. 501, 8127, 8128 and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

27. Section 828.106–71 is added to read as follows:

828.106–71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

VA prime contractors are encouraged to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their Protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

28. Section 828.106–72 is added to read as follows:

828.106–72 Contract provision.

Insert the provision at 852.228–72, Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds, in solicitations that include the FAR clause at 52.228–1, Bid Guarantee.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

29. The authority citation for part 852 is revised to read as follows:

Authority: 38 U.S.C. 501, 8127, 8128, and 8151–8153; 40 U.S.C. 121(c); and 48 CFR 1.301–1.304.

30. Section 852.215–70 is added to read as follows:

852.215–70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

As prescribed in 815.304–71(a), insert the following clause:

Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors (Date)

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA may evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages. (*http://www.VetBiz.gov*).

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov Vendor Information Pages (VIP) (*http://www.vetbiz.gov*).

(End of Clause)

31. Section 852.215–71 is added to read as follows:

852.215–71 Evaluation Factor Commitments.

As prescribed in 815.304–71(b), insert the following clause:

Evaluation Factor Commitments (Date)

The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with clause 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(End of Clause)

32. Section 852.219–9 is added to read as follows:

852.219–9 VA Small Business Subcontracting Plan Minimum Requirements.

As prescribed in 819.9, insert the following clause:

VA Small Business Subcontracting Plan Minimum Requirements (Date)

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

(c) For a commercial plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small businesses shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in VAAR subpart 819.407.

(End of Clause)

33. Section 852.219–10 is added to read as follows:

852.219–10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

As prescribed in 819.7009, insert the following clause:

VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (Date)

(a) *Definition.* For the Department of Veterans Affairs, ''Service-disabled veteran-owned small business concern''—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans (or eligible surviving spouses);

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans (or eligible surviving spouses) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages, (*http://www.VetBiz.gov*).

(2) ''Service-disabled veteran'' means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(b) *General.*

(1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a service-disabled veteran-owned small business concern.

(c) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible service-disabled veteran-owned small business concerns.

(d) A joint venture may be considered a service-disabled veteran-owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation.

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(e) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of Clause)

34. Section 852.219–11 is added to read as follows:

852.219–11 VA Notice of Total Veteran-Owned Small Business Set-Aside.

As prescribed in 819.7009, insert the following clause:

VA Notice of Total Veteran-Owned Small Business Set-Aside (Date)

(a) *Definition.* For the Department of Veterans Affairs, ''Veteran-owned small business concern''—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans;

(ii) The management and daily business operations of which are controlled by one or more veterans;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages (*http://www.VetBiz.gov*).

(2) ''Veteran'' is defined in 38 U.S.C. 101(2).

(b) *General.*

(1) Offers are solicited only from veteran-owned small business concerns. All service-disabled veteran-owned small businesses are also determined to be veteran-owned small businesses if they meet the criteria identified in paragraph (a)(1) of this section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a veteran-owned small business concern.

(c) *Agreement.* A veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible veteran-owned small business concerns.

(d) A joint venture may be considered a veteran-owned small business concern if—

(1) At least one member of the joint venture is a veteran-owned small business concern, and makes the following representations: That it is a veteran-owned small business concern, and that it is a small business concern under the NAICS code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), except that the principal company may be a veteran-owned small business concern or a service-disabled veterans-owned small business concern.

(e) Any veteran-owned small business concern (nonmanufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of Clause)

35. Section 852.219–71 is added to read as follows:

852.219–71 VA Mentor-Protégé Program.

As prescribed in 819.7115(a), insert the following clause:

VA Mentor-Protégé Program (Date)

(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as subcontractors.

(b) The program consists of:

(1) Mentor firms, which are prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and

(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.

(c) Mentor participation in the program means providing business developmental assistance to aid Protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.

(d) Large business prime contractors serving as Mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a Mentor firm in providing assistance to a Protégé firm and apply those costs for purposes of determining whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a Mentor firm for these Protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information.

(End of Clause)

36. Section 852.219–72 is added to read as follows:

852.219–72 Evaluation Factor for Participation in the VA Mentor-Protégé Program.

As prescribed in 819.7115(b), insert the following clause:

Evaluation Factor for Participation in the VA Mentor-Protégé Program (Date)

This solicitation contains an evaluation factor or sub-factor regarding participation in the VA Mentor-Protégé Program. In order to receive credit under the evaluation factor or sub-factor, the offeror must provide with its proposal a copy of a signed letter issued by the VA Office of Small and Disadvantaged Business Utilization approving the offeror's Mentor-Protégé Agreement.

(End of Clause)

37. Section 852.228–72 is added to read as follows:

852.228–72 Assisting Service-Disabled Veteran-owned and Veteran-owned Small Businesses in Obtaining Bonds.

As prescribed in 828.106–71, insert the following clause:

Assisting Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses in Obtaining Bonds (Date)

Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist Protégé firms under VA's Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

(End of Provision)

[FR Doc. E8–19261 Filed 8–19–08; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 31, 2008, the NTSB published a Notice of Proposed Rulemaking to amend its regulations concerning notification and reporting requirements with regard to unmanned aircraft accidents, found at 49 *Code of Federal Regulations* (CFR) Part 830, ''Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records.'' This Notice of Proposed Rulemaking is available at 73 FR 16826 (Mar. 31, 2008). The NTSB is publishing this notice to inform the public that it is extending the comment period for the Notice of Proposed Rulemaking to September 30, 2008.

DATES: Submit comments on or before September 30, 2008.

ADDRESSES: You may send written comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

2. *Mail:* Mail comments concerning this proposed rule to Dana Schuize, AS–b, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–2000.

3. *Fax:* (202) 314–6319, Attention: Dana Schuize.

4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Dana Schuize, Office of Aviation Safety, (202) 314–6323.

SUPPLEMENTARY INFORMATION: After issuing the March 31, 2008, Notice of Proposed Rulemaking concerning unmanned aircraft accidents, the NTSB discovered that a problem existed with the Web site, available at *http://www.regulations.gov*, that the NTSB listed in the Notice as one mechanism by which it would receive public comments. In particular, the NTSB subsequently determined that commenters were unable to submit comments through that Web site. The

NTSB has arranged for this problem to be corrected and verified that commenters may now access the Notice of Proposed Rulemaking and submit comments via *http://www.regulations.gov*. As such, the NTSB is allowing the comment period for the Notice of Proposed Rulemaking to remain open until September 30, 2008. The NTSB notes that it received several comments via facsimile and postal mail; commenters who submitted comments via facsimile or postal mail need not resubmit them.

Dated: August 8, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8–19104 Filed 8–19–08; 8:45 am]

BILLING CODE 7533–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0808051050–81056–01]

RIN 0648–XJ42

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2008, through June 30, 2009. This HG has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by September 19, 2008.

ADDRESSES: You may submit comments on this proposed rule identified by 0648–XJ42 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562)980–4047, Att: Joshua Lindsay

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 (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–2009 Fishing Year* may be obtained from the Southwest Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines (HG) for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT), the Council's Coastal Pelagic Species Advisory Subpanel (CPSAS) and the CPS Subcommitee of the Scientific and Statistical Committee (SSC). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season. The Pacific mackerel season begins on July 1 and ends on June 30 of each year.

For the 2008–2009 Pacific mackerel management season an updated assessment for Pacific mackerel was conducted and then reviewed by the SSC CPS Subcommittee, the CPSMT and the CPSAS during a series of meetings May 13–15, 2008, in Long Beach California. During these meetings the current stock assessment for Pacific mackerel, which included a preliminary biomass estimate and ABC, were presented and reviewed in accordance with the procedures of the FMP. Based on a total stock biomass estimate of 264,732 metric tons (mt) the harvest control rule in the CPS FMP produces an ABC of 51,772 mt for the 2008–2009 management season.

In June, the Council held a public meeting in Foster City, California, during which time the Council reviewed the current stock assessment, biomass numbers and ABC as well as heard statements from the SSC, Team and Subpanel. The SSC endorsed the assessment as the best available science for use in management. Both the Team and Subpanel recommended setting the 2008–2009 HG below ABC and no higher than 40,000 mt.

Following the SSC, Team and Subpanel reports the Council adopted a HG of 40,000 mt for the 2008–2009 fishing year. This HG recommendation is the same as the one recommended and implemented by NMFS for the 2007–2008 fishing season. Establishing a HG for the directed fishery substantially below the ABC was recommended in response to uncertainty associated with changes to assessment modeling parameters and the estimate made in the FMP that the domestic fishery appears to be market limited to roughly 40,000 mt. The Council also adopted the Subpanel recommendation that in the event that the 40,000 mt is attained by the fishery, that Pacific mackerel fishing be closed to directed harvest and only incidental harvest be allowed. The proposed incidental fishery would be constrained to a 45 percent by weight incidental catch rate when Pacific mackerel are landed with other CPS, except that up to one metric ton of Pacific mackerel could be landed per trip without landing any other CPS.

The Council may schedule an inseason review of the Pacific mackerel fishery at the nearest appropriate Council meeting, towards a possible consideration of either releasing a portion of the incidental allotment to the directed fishery or further constraining incidental landings to

ensure total harvest remains below the ABC.

Information on the fishery and the stock assessment are found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2008–09 Fishing Season* (see **ADDRESSES**).

The harvest control rule formula in the FMP uses the following factors to determine the ABC:

1. *Biomass.* The estimated stock biomass of Pacific mackerel age one and above for the 2008–2009 management season is 264,732 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Distribution.* The portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established this at 30 percent.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to implement the 2008–2009 HG for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific mackerel fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast which primarily includes the fisheries for Pacific sardine, Northern anchovy, Jack mackerel and Market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 N. latitude; Point Arena, California) of the fishery. Sixty-two vessels are currently permitted in the Federal CPS limited entry fishery off California. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of $4.0 million. This proposed rule has an equal effect on all of these small entities. Therefore, there would be no disporportionate impacts on large and small business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2007/2008 fishing year, the HG was set at 40,000 mt with an estimated ex-vessel value of approximately $5.3 million. Around 6,200 mt of this HG was actually harvested during the 2007/2008 fishing season valued at an estimated $900,000.

The proposed harvest guideline for the 2008/2009 Pacific mackerel fishing season (July 1, 2008 through June 30, 2009) is 40,000 metric tons (mt). This HG recommendation is the same as the HG recommended by the Council and approved by NMFS for the 2007/2008 fishing year. If the fleet were to take the entire 2008/2009 HG, and assuming no change in the coastwide average ex-vessel price per mt of $146, the potential revenue to the fleet would be approximately $5.8 million. A potential lack of availability of the resource to the fishing fleet however, could cause a reduction in the amount of Pacific mackerel harvested, in which case profits would be lower than if the total HG were taken. Additionally, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full HG will be taken during the 2008–2009 fishing year, in which case profits will again be lower than if the entire HG were taken. However, because the average U.S. harvest since the year 2000 is only 5,700 mt, the potential reduced revenues would not be a result of the proposed HG.

NMFS does not anticipate a drop in profitability based on this rule because it allows fishermen to harvest the same amount of fish as the previous fishing season. Based on the disproportionality and profitability analysis above, this rule if adopted, will not have a significant economic impact on a substantial number of these small entities.

As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 14, 2008.

Samuel D. Rauch III,

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

[FR Doc. E8–19309 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AV28

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures for the Northern Mariana Islands

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Management Plan for the Bottomfish & Seamount Groundfish Fisheries of the Western Pacific Region. If approved by the Secretary of Commerce, Amendment 10 would establish Federal permitting and reporting requirements for all commercial bottomfish fishing in the U.S. Exclusive Economic Zone (EEZ) around the Commonwealth of the Northern Mariana Islands (CNMI). The amendment would also close waters within 50 nm (80.5 km) of the southern CNMI and within 10 nm (18.5 km) of the northern island of Alamagan to bottomfish fishing by vessels over 40 ft (12.2 m) in length, which also would be required to carry and operate shipboard vessel monitoring system units, and whose operators would be required to submit bottomfish sales reports in addition to catch reports. The proposed amendment would ensure adequate collection of information about the CNMI bottomfish fishery, provide for sustained community participation in the CNMI bottomfish fishery, and encourage consistent availability of locally-caught bottomfish to CNMI consumers. Combined, these measures are intended to prevent the depletion of bottomfish stocks in the CNMI, and sustain the fisheries that depend on them.

DATES: Comments on Amendment 10, which includes an environmental assessment, must be received by October 20, 2008.

ADDRESSES: Comments on the amendment, identified by 0648–AV28, may be sent to either of the following addresses:

• Electronic Submission: Submit all electronic public comments via the

Federal e-Rulemaking Portal www.regulations.gov; or

• Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (if you wish to remain anonymous, enter ''NA'' in the required name and organization fields). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 10, including an environmental assessment, are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is accessible via the the Office of the **Federal Register** website *www.gpoaccess.gov/fr*.

The bottomfish fishery around the CNMI is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), which was developed by the Council, and approved and implemented by NMFS. The Council has submitted Amendment 10 to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act. This notice announces that the amendment is available for public review and comment for 60 days. NMFS will consider public comments received during the comment period in determining whether to approve, partially approve, or disapprove Amendment 10.

CNMI nearshore areas have been fished for years by bottomfish fishermen who engage in a mix of subsistence, recreational, and small-scale commercial fishing. These fishermen typically operate small vessels (less than 25 ft (7.6 m)), and tend to fish more in the summer months when weather and sea conditions are calmer. Most of these small vessels target shallow-water bottomfishes, but some also target deep-water species. The catch from these small vessels is usually not exported, but is destined for local markets.

In addition to these small vessels, vessels over 40 ft (12.2 m) in length also target deep-water bottomfish at offshore seamounts and banks. In 2006, there were six of these larger vessels targeting bottomfish around the CNMI, and one in 2007. Landings are offloaded on Saipan and in other CNMI commercial ports, and are often exported by air to Japan.

The CNMI is close to Guam, and it is possible for large bottomfish vessels based in Guam to travel to fishing grounds in the CNMI. NMFS recently implemented a final rule that prohibits large vessels (greater than 50 ft (15.2 m)) from bottomfish fishing within 50 miles (80.5 km) around Guam (71 FR 64474; November 2, 2006). Without similar closed areas around the CNMI, operators of large Guam-based vessels may choose to fish for bottomfish within U.S. EEZ waters around the CNMI. This could result in excessive fishing pressure on bottomfish stocks at nearshore banks, potentially threatening both the fish stocks and the fisheries that have historically been dependent on these resources.

In addition to the possibility of Guam-based vessels entering the CNMI bottomfish fishery, the Council is concerned about several other issues regarding bottomfish fishing in the CNMI. First, existing data collection programs in the CNMI are insufficient to comprehensively monitor catches and determine the impacts of the fishery on the stock(s) being harvested, or to determine the species composition and amount of discarded bycatch. Second, large bottomfish vessels need to harvest relatively large catches to cover operational costs. These large catches could deplete nearshore stocks, which would threaten sustained community participation in the bottomfish fishery. Small vessels would not be able to continue operating if catch rates were significantly reduced due to heavy fishing by the larger vessels. Finally, traditional patterns of supply and consumption of bottomfish in the local community would be disrupted by reduced community participation and/or large exports of bottomfish fish from the CNMI by the operators of the large vessels.

In response to these concerns, the Council developed Amendment 10 with the following objectives: (1) ensure that adequate information is routinely collected on the CNMI's offshore bottomfish fishery; (2) provide for sustained community participation in the CNMI bottomfish fishery; and (3) encourage the consistent availability of locally caught deepwater bottomfish to CNMI markets and consumers.

Public comments on the proposed amendment must be received by October 20, 2008 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. A proposed rule to implement the amendment has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 14, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19337 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 162
Wednesday, August 20, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Northwest Agricultural Products, Inc. of Pasco, Washington, an exclusive license to U.S. Patent No. 5,552,315, ''Bacteria for the Control of Fusarium Dry Rot of Potatoes'', issued on September 3, 1996, U.S. Patent No. 5,783,411, ''Bacterial Control of Fusarium Dry Rot of Potatoes'', issued on July 21, 1998, and U.S. Patent No. 6,107,247, ''Biological Control of Sprouting in Potatoes'', issued on August 22, 2000.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Northwest Agricultural Products, Inc. of Pasco, Washington has submitted a complete and sufficient application for a license. 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. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–19216 Filed 8–19–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Uniform Grant Application Package for Discretionary Grant Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision and extension of a currently approved collection.

The purpose of the Uniform Grant Application Package for Discretionary Grant Programs is to provide a standardized format for the development of all Requests for Applications released by the Food and Nutrition Service (FNS) Agency and to allow for a more expeditious OMB clearance process.

DATES: Written comments must be submitted on or before October 20, 2008.

ADDRESSES: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lael J. Lubing, Grants Management Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 732, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Lael J. Lubing at 703–605–0363 or via e-mail to *lael.lubing@fns.usda.gov*.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 732.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Lael J. Lubing on (703) 305–2048.

SUPPLEMENTARY INFORMATION:

Title: Uniform Grant Application Package for Discretionary Grant Programs.

OMB Number: 0584–0512.

Expiration Date: November 30, 2008.

Type of Request: Revision of the previously approved collection of information.

Abstract: FNS has a number of discretionary grant programs. (Consistent with the definition in 7 CFR Part 3016, the term ''grant'' as used in this notice includes cooperative agreements.) The authorities for these grants vary and will be cited as part of each grant application solicitation. The purpose of the revision to the currently approved collection for the Uniform Grant Application Package for Discretionary Grant Programs is to continue the authority for the established uniform grant application package and to update the number of collection hours. The uniform collection package is useable for all of FNS' discretionary grant programs to collect information from grant applicants that is needed to evaluate and rank applicants and protect the integrity of the grantee

selection process. All FNS discretionary grant programs will be eligible, but not required, to use the uniform grant application package. Before soliciting applications for a discretionary grant program, FNS will decide whether the uniform grant application package will meet the needs of that grant program. If FNS decides to use the uniform grant application package, FNS will note in the grant solicitation that applicants must use the uniform grant application package and that the information collection has already been approved by OMB. If FNS decides not to use the uniform grant application package or determines that it needs grant applicants to provide additional information not contained in the uniform package, then FNS will publish a notice soliciting comments on its proposal to collect different or additional information before making the grant solicitation.

The uniform grant application package will include general information and instructions; a checklist; a requirement for the program narrative statement describing how the grant objectives will be reached; the Standard Form (SF) 424 series that requests basic information, budget information, a lobbying certification and an optional survey form to ensure equal opportunity for applicants. The proposed information collection covered by this notice is related to the requirements for the program narrative statement. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1c(5) of the OMB Circular A–102, and will apply to all types of grantees—State and local governments, Indian Tribal Organizations, Non-Profit Organizations, Institutions of Higher Education, Hospitals and For-Profit Organizations. The information collection burden related to the SF–424 series, lobbying certification and the optional survey form for all applicants have been separately approved by OMB.

Affected Public: State and local governments, Indian Tribal Organizations, Non-Profit Organizations, Institutions of Higher Education, Hospitals, and For-Profit Organizations.

Estimated Number of Respondents: 315.

Number of Responses per Respondent: 1.5.

Estimated Total Annual Responses: 472.5.

Hours per Response: 66.

Number of Record Keepers: 315.

Estimated Annual Hours per Record Keepers: 66.

Total Record Keeping Hours: 31,185.

Total Annual Reporting Hours: 31,185.

Dated: August 12, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8–19269 Filed 8–19–08; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, September 11, 2008, at the Diplomat Hotel, 501 Diplomat Parkway, Miami, FL 33009. A first purpose of the meeting is for the Committee to receive briefings on religious discrimination and the Federal Housing Assistance Program. A second purpose is for the Committee to plan activities regarding a civil rights project for 2009.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office by September 30, 2008. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to e-mail comments may do so to *pminarik@usccr.gov.* Persons who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, U.S. Commission on Civil Rights at 404–562–7000 (or for the hearing impaired, TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 15, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–19301 Filed 8–19–08; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of the Wyoming Advisory Committee will convene at 10 a.m. and adjourn at 12 p.m. (MST) on Saturday, September 13, 2008 at Little America, 2800 W. Lincolnway, Cheyenne, WY 82009.

The purpose of the meeting is to conduct orientation and ethics training for the newly appointed committee. The committee will discuss recent Commission and regional activities, discuss current civil rights issues in the state, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Malee V. Craft, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 15, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–19297 Filed 8–19–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Highly Migratory Species Vessel and Gear Marking.

Form Number(s): None.

OMB Approval Number: 0648–0373.
Type of Request: Regular submission.
Burden Hours: 6,995.
Number of Respondents: 6,886.
Average Hours Per Response: Vessel marking, 45 minutes; gear marking, 15 minutes.
Needs and Uses: Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (codified at 50 CFR 635.6), and in order to comply with United States obligations under the Atlantic Tunas Convention Act, fishing vessels permitted for Atlantic Highly Migratory Species must display their official vessel numbers on their vessels to assist law enforcement in monitoring fishing and other activities. Floatation devices attached to certain fishing gear must also be marked with the vessel's official numbers to identify gear and catch deployed beneath the surface. This is also necessary for law enforcement purposes.
Affected Public: Business or other for-profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: August 14, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–19200 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Notice of Performance Review Board Members

AGENCY: Economics and Statistics Administration.

ACTION: Performance Review Board Membership.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

Thomas L. Mesenbourg
Shirin Ahmed
Mark Wallace
William G. Bostic, Jr.
Daniel Weinberg
Nancy M. Gordon
Arnold A. Jackson
Theodore A. Johnson
Ruth Ann Killion
Andrew Moxam
Michael J. Longini
Francis Grailand Hall
Brian Monaghan
C. Harvey Monk
Daniel Weinberg
Tommy Wright
William Bell
Michael Palensky
James Tyler, Jr.
Douglas Clift
Marilia Matos
David Hackbarth
Jeffrey Mayer
Enrique Lamas
Thomas Zabeisky
David Whitford
Frank Vitrano
Susan Schechter Bortner
Howard Hogan
David Johnson
Cheryl Landman
David F. Findley
Paul Friday
J. Steven Landefeld
Rosemary D. Marcuss
Dennis J. Fixler
Brent R. Moulton
Joel Platt
James K. White
Dr. Jennifer Madans

FOR FURTHER INFORMATION CONTACT: Crystal Roy, 301–763–3727.

Dated: August 6, 2008.

James K. White,

Associate Under Secretary for Management Chair, Performance Review Board.

[FR Doc. E8–19147 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1569]

Grant of Authority for Subzone Status

In Mocean Group, LLC

(Swimwear/Beach Accessories Distribution)

North Brunswick, New Jersey

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

WHEREAS, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

WHEREAS, the Port Authority of New York and New Jersey, grantee of Foreign–Trade Zone 49, has made application for authority to establish special–purpose subzone status at the swimwear and beach accessories distribution facility of In Mocean Group, LLC, in North Brunswick, New Jersey (Docket 45–2007, filed 8/31/2007);

WHEREAS, notice inviting public comment was given in the **Federal Register** (72 FR 51780, 9/11/2007); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to a restriction;

NOW, THEREFORE, the Board hereby grants authority for subzone status for activity related to swimwear and beach accessories distribution at the In Mocean Group, LLC, facility located in North Brunswick, New Jersey (Subzone 49K), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction that all foreign–origin textile and apparel products that are subject to U.S. import quotas will be admitted to the proposed subzone under privileged foreign status (19 CFR §146.41) or domestic (duty–paid) status (19 CFR §146.43).

Signed at Washington, DC, this 5 th day of August 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration.

Alternate Chairman.

Foreign–Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–19321 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 13, 2008, the Department of Commerce (''Department'') published its preliminary results and partial rescission in the antidumping duty administrative review and new shipper review of wooden bedroom furniture from the People's Republic of China (''PRC''). The period of review (''POR'') for the administrative review and the new shipper review is January 1, 2006, through December 31, 2006. In the administrative review, we have determined that all three mandatory respondents (*i.e.*, Fujian Lianfu Forestry Co./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd. (collectively, ''the Dare Group''); Shanghai Starcorp Furniture Co., Ltd, Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., and Shanghai Xing Ding Furniture Industrial Co., Ltd. (collectively, ''Starcorp''); and Teamway Furniture (Dong Guan) Co., Ltd., and Brittomart Inc. (collectively ''Teamway'')) made sales in the United States at prices below normal value. With respect to the remaining respondents in the administrative review (collectively, ''Separate Rate Applicants''), we determined that 27 entities have provided sufficient evidence that they are separate from the state-controlled entity, and we have established a weighted-average margin based on the rates for the three mandatory respondents, excluding any that are zero, *de minimis*, or based entirely on adverse facts available (''AFA''), to be applied to these separate-rate entities. For the new shipper review, the Department also reviewed one exporter/producer, Mei Jia Ju Furniture Industrial (Shenzhen) Co. Ltd. (''Mei Jia Ju''). We invited interested parties to comment on our preliminary results in these reviews. We received no comments in the new shipper review. Based on our analysis of the comments we received in the administrative review, we made certain changes to our calculations for all mandatory respondents. The final dumping margins for this review are listed in the ''Final Results Margins'' section below.

EFFECTIVE DATE: August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–3434, respectively.

Background

The Department published its preliminary results on February 13, 2008. *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273 (February 13, 2008) (''*Preliminary Results*''). The Department conducted verification of two of the mandatory respondents' data in the PRC. *See* ''Verification'' section, below, for additional information.

On June 23, 2008, the Department extended the deadline for the final results of review to August 11, 2008. *See Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 73 FR 35369 (June 23, 2008). We invited parties to comment on the *Preliminary Results*. We received comments from petitioners American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, certain mandatory respondents, certain Separate-Rate Applicants, and other interested parties to this review. Interested parties submitted case and rebuttal briefs on July 18 and July 23, 2008, respectively.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review and New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 11, 2008, which is hereby adopted by this notice (''Issues and Decision Memorandum''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Period of Review

The POR is January 1, 2006, through December 31, 2006.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-

on-chests,[1] highboys,[2] lowboys,[3] chests of drawers,[4] chests,[5] door chests,[6] chiffoniers,[7] hutches,[8] and armoires;[9] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[10] (9) jewelry armories;[11] (10) cheval mirrors;[12] (11) certain metal parts;[13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; and (13) upholstered beds.[14] Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

[12] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.90.7000.

[14] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''Act''), we verified the information submitted by certain mandatory respondents. *See* Memoranda to the File, ''Verification of the Factors Response of {the Dare Group}, in the Second Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the PRC,'' (July 10, 2008) (''Dare Group Verification Report'') and ''Verification of the Factors Response of {Teamway} in the Second Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the PRC'' (July 3, 2008) (''Teamway Verification Report''), on file in the CRU. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents. For further details on the verifications, see the Dare Group Verification Report and the Teamway Verification Report.

Changes Since the Preliminary Results

Based on an analysis of the comments received, the Department has made certain changes in the margin calculations. For the final results, the Department has made the following changes with respect to surrogate financial ratios, surrogate values, the Dare Group and Teamway.

General Issues

Calculation of Surrogate Financial Ratios

- After the *Preliminary Results*, the Dare Group's importer, American Signature Inc., placed financial statements on the record for the following four Philippine companies: (1) Berbenwood Industries, Inc. (''Berbenwood''); (2) Antonio Bryan Development Corporation (''Antonio Bryan''); (3) Arkane International Corporation; and (4) Raphael Legacy Designs, Inc. For the final results, we included Antonio Bryan and

Berbenwood's surrogate financial ratio calculations in the average financial ratios. *See* Memorandum to The File, ''Second Administrative Review of Wooden Bedroom Furniture from the People's Republic of China: Factor Valuation Memorandum for the Final Results'' (''Final FOP Memo'') and Issues and Decision Memorandum at Comment 10.

• *Calfurn Manufacturing Philippines, Inc. (''Calfurn''):* (1) We treated Calfurn's ''gas and oil'' as material, labor, and energy (''ML&E'') related to respondents' reported factors of production (''FOPs''); and (2) we treated energy related to selling, general, and administrative (''SG&A'') expenses as SG&A. *See* Final FOP Memo and Issues and Decision Memorandum at Comment 11.

• *Insular Rattan & Native Products, Corporation (''Insular Rattan''):* (1) We treated Insular Rattan's ''fuel used'' as ML&E; and (2) we treated energy related to SG&A operations as SG&A expenses. *See* Final FOP Memo and Issues and Decision Memorandum at Comment 11.

Recalculation of Surrogate Values

• For the final results, the Department corrected certain unit conversion factors used to calculate surrogate values.

• The Department calculated surrogate values for certain FOPs using Indian import statistics.

• The Department recalculated the surrogate values for granite and leatheroid, excluding aberrational import data from the calculations.

• The Department recalculated surrogate values for certain inputs where corrupted data was mistakenly used in the *Preliminary Results*.

• The Department recalculated the surrogate financial ratios.

See Final FOP Memo.

Company-Specific Issues

The Dare Group

• The Dare Group reported market economy purchase (''MEP'') prices for paint, light, catches, poplar, and plastic. At the Department's request, the Dare Group disaggregated these FOPs into more specific groupings. However, the Dare Group did not report the percentage of each of the disaggregated FOPs purchased from market economy (''ME'') countries in ME currencies. Therefore, as partial AFA, the Department is valuing the disaggregated MEP FOPs using surrogate values based on Indian or Philippine import statistics, as applicable. *See* Issues and Decision Memorandum at Comment 14 and the Analysis Memorandum for the Final Results of Review: Fujian Lianfu Forestry Co., Ltd., Fuzhou Huan Mei Furniture Co. Ltd., and Jiangsu Dare Furniture Co., Ltd. (''Dare Group Final Calculation Memo'').

• The Department found at verification that the Dare Group under-reported consumption of the FOP ''Plywood with Veneer.'' As partial AFA, the Department is increasing the per-unit consumption rate of this FOP as described in the Dare Group Final Calculation Memo. *See* Issues and Decision Memorandum at Comment 16 and the Dare Group Final Calculation Memo.

• The Dare Group reported it purchased subject merchandise, semi-finished furniture, from unaffiliated suppliers which it further processed and subsequently sold to the United States, but did not report the relevant FOPs which it further processed and sold to the United States during the POR. However, the Dare Group provided documents evidencing it attempted to obtain the FOP data from its suppliers but its suppliers did not provide the FOPS as requested. Therefore, as facts available, the Department is valuing semi-finished furniture as an FOP using Indian import statistics. *See* Issues and Decision Memorandum at Comment 12 and the Dare Group Final Calculation Memo.

• For the final results, the Department has treated the Dare Group's reported per-unit ''Woodscrap'' as a by-product. *See* Issues and Decision Memorandum at Comment 20 and the Dare Group Final Calculation Memo.

• The Department corrected certain clerical errors in the Dare Group's surrogate value summary sheet with respect to notations in the source unit, currency, and final unit columns. *See* Issues and Decision Memorandum at Comment 21 and the Dare Group Final Calculation Memo.

• We have excluded certain sales of non-subject merchandise from the Dare Group's U.S. sales database. *See* Issues and Decision Memorandum at Comment 15 and the Dare Group Final Calculation Memo.

Teamway

• For these final results, we applied AFA to steel screws, nut steel, steel bar, glue, direct labor, electricity, water, and fuel/oil/diesel from the May 5, 2008, FOP database for subcontractors for whom Teamway provided materials. *See* Issues and Decision Memorandum at Comment 26 and Analysis of the Final Results Margin Calculation for Teamway Furniture (Dong Guan) Ltd. and Brittomart Incorporated (''Teamway Final Calculation Memo'').

• For these final results, we applied AFA to the veneers, glue, parquet tape, direct labor, electricity, water, and fuel/oil/diesel from the May 5, 2008, FOP database for subcontractors for whom Teamway did not provide materials. *See* Issues and Decision Memorandum at Comment 26 and Teamway Final Calculation Memo.

• For these final results, for bun feet, bent wood, and mirrors obtained from subcontractors for whom Teamway did not provide materials, we valued these inputs with surrogate values. *See* Issues and Decision Memorandum at Comment 29 and Teamway Final Calculation Memo.

• For the final margin calculation, we created a new integrated FOP database based upon the FOP databases submitted on May 5, 2008. This final integrated FOP database incorporates on the following: (1) The May 5, 2008, Teamway in-house FOP database; (2) the May 5, 2008, FOP database for subcontractors for whom Teamway provided materials, as adjusted for the application of partial AFA discussed above, and; (3) the May 5, 2008, FOP database for subcontractors for whom Teamway did not provide materials, as adjusted for: (A) The minor correction, which we accepted, to correct the reported water and electricity usage rates;[15] and (B) the application of partial AFA discussed above. *See* Issues and Decision Memorandum at Comment 27 and Teamway Final Calculation Memo.

• As facts available, for these final results for the merchandise that was sold, but not produced, during the POR, we determined to use the FOPs from the final integrated FOP database (discussed immediately above) for the most similar control number (''CONNUM'') produced during the POR (as determined by the Department). *See* Issues and Decision Memorandum at Comment 28 and Teamway Final Calculation Memo.

• For the final results, we reexamined a certain input purchased by Teamway, and found that the volume of this input from ME suppliers during the POR was below 33 percent of the company's total volume of purchases of the input during the POR. Therefore, consistent with our practice, we weight-averaged the MEP price Teamway paid for the certain input with the appropriate surrogate value, according to its respective shares of the total volume of purchases, as appropriate. *See* Issues and Decision Memorandum at Comment 32 and Teamway Final Calculation Memo.

• For the final results, we removed packing labor from the labor component

[15] *See* Teamway Verification Report at 2 (*i.e.*, I. Minor Corrections 3.b).

of COM, and included it only in the packing costs which we used to calculate normal value. *See* Issues and Decision Memorandum at Comment 31 and Teamway Final Calculation Memo.

• The U.S. sales database and the FOP databases, on which we based our integrated FOP database that we used for these final results, were placed on the record after the preliminary results. We found, and corrected errors in these databases which were not raised in the parties' briefs. A full discussion of the additional corrections we made to the Teamway U.S. sales database and integrated FOP database we used for these final results can be found in the Teamway Final Calculation Memo.

Surrogate Country

In the *Preliminary Results*, we stated that we had selected the Philippines as the appropriate surrogate country to use in this review for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a level of economic development comparable to that of the PRC; and (3) we have reliable data from the Philippines that we can use to value the FOPs. See *Preliminary Results*. For the final results, we received comments regarding our selection of a surrogate country. After reviewing those comments, we determined to make no changes to our findings with respect to the selection of a surrogate country. However, for certain inputs the Department determined to use India to value those inputs. *See* Comment 1 of the Issues and Decision Memorandum.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Results*, we stated that the Dare Group, Teamway, and 27 Separate Rate Applicants demonstrated their eligibility for separate-rate status. For the final results, we continue to find that evidence placed on the record of this review only demonstrates that the Dare Group, Teamway, and 27 of the Separate Rate Applicants provided information that shows both a *de jure* and *de facto* absence of government control with respect to their respective exports of the merchandise under review, and, thus are eligible for separate-rate status. With respect to the new shipper, Mei Jia Ju, we stated in the *Preliminary Results* that we were granting a separate rate to Mei Jia Ju. However, because Mei Jia Ju failed to provide us with necessary information within the meaning of section 776(a) of the Act and failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act we applied total adverse facts available to Mei Jia Ju and assigned them the PRC-wide rate of 216.01 percent. No parties have commented on Mei Jia Ju's rate and we continue to assigned Mei Jia Ju an AFA rate of 216.01 percent.

Affiliation

In the *Preliminary Results*, we stated that the Dare Group entities (Fujian Lianfu Forestry Co. Ltd., Fujian Wonder Pacific Inc., Fuzhou Huan Mei Furniture Co., Ltd., and Jiangsu Dare Furniture Co., Ltd.) were affiliated pursuant to sections 771(33)(E) and (F) of the Act and that these companies should be treated as a single entity for the purposes of the administrative review of wooden bedroom furniture from the PRC. *See Preliminary Results*, 73 FR at 8278. For the final results, we have made no changes to our findings with respect to the Dare Group's affiliation.

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Starcorp

In the *Preliminary Results,* we determined that because Starcorp ceased participating in this administrative review, and requested that the Department and all parties destroy or return its submissions containing business proprietary information, none of Starcorp's information could be verified. As a result, Starcorp did not demonstrate its entitlement to a separate rate and was, therefore, subject to the PRC-wide rate. *See Preliminary Results,* 73 FR at 8282. For the final results, we made no changes to our findings with respect to Starcorp.

The PRC-Wide Rate

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the ''Final Results Margins'' section, below, have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC-wide rate) to all other exporters of subject merchandise from the PRC. These other companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less*

Than Fair Value, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents that are listed in the ''Final Results Margins'' section, below.

The Department based the margin for the PRC-wide entity on AFA. *See Preliminary Results,* 73 FR at 8282. Pursuant to section 776(a) of the Act, the Department found that because the PRC-wide entity failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, submitted information that could not be verified, or otherwise impeded the process, it was appropriate to apply a dumping margin for the PRC-wide entity using facts otherwise available on the record. The Department further determined that an adverse inference was appropriate because the PRC-wide entity failed to respond to requests for information and therefore failed to cooperate by not acting to the best of its ability. With respect to AFA, we are applying the highest calculated rate from the history of this proceeding: a calculated company-specific rate in a new shipper review of wooden bedroom furniture from the PRC. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004–2005 Semi-Annual New Shipper Reviews,* 71 FR 70739 (December 6, 2006) (''*Final 04–05 New Shipper Reviews*'').

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994) (''SAA''), at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final results). Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870; *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183 (March 11, 2005); *Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627, 35628–35629 (June 16, 2003) (unchanged in final determination).

The AFA rate that the Department is now using was determined in a previously published final results of new shipper review. *See Final 04–05 New Shipper Reviews.* In that new shipper review, the Department calculated a company-specific rate, which was above the PRC-wide rate established in the investigation. Because this rate is a company-specific calculated rate concerning subject merchandise, we have determined this rate to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated). To assess the relevancy of the rate used, the Department compared that rate to the margin calculations of the mandatory respondents in the current administrative and new shipper reviews. The Department found that the margin of 216.01 percent was within the range of the highest margins calculated on the record of this administrative review. Because the record of this administrative review contains margins within the range of 216.01 percent, we determine that the rate from the *Final 04–05 New Shipper Reviews* continues to be relevant for use as AFA in the current administrative and new shipper reviews.

As the adverse margin is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that this rate meets the corroboration criterion established in section 776(c) of the Act, that secondary information have probative value. As a result, the Department determines that the margin is corroborated for the purposes of these administrative reviews and may reasonably be applied to Mei Jia Ju, and the PRC-wide entity as AFA.

Final Results Margins

We determine that the following weighted-average percentage margins exist for the POR:

WOODEN BEDROOM FURNITURE FROM THE PRC

Exporter	Weighted-average margin (percent)
Fujian Lianfu Forestry Co., Ltd., aka Fujian Wonder Pacific Inc. (Dare Group)	17.93
Fuzhou Huan Mei Furniture Co., Ltd. (Dare Group)	17.93
Jiangsu Dare Furniture Co., Ltd. (Dare Group)	17.93
Teamway Furniture (Dong Guan) Co. Ltd., Brittomart Inc	19.93
BNBM Co., Ltd. (aka Beijing New Material Co., Ltd)	18.82
Classic Furniture Global Co., Ltd	18.82

WOODEN BEDROOM FURNITURE FROM THE PRC—Continued

Exporter	Weighted-average margin (percent)
Dalian Guangming Furniture Co., Ltd	18.82
Decca Furniture Ltd., aka Decca	18.82
Dong Guan Golden Fortune Houseware Co., Ltd	18.82
Dongguan Mingsheng Furniture Co., Ltd	18.82
Dongguan Yihaiwei Furniture Limited	18.82
Fortune Furniture Ltd. and its affiliate, Dongguan Fortune Furniture Ltd	18.82
Gaomi Yatai Wooden Ware Co., Ltd., Team Prospect International Ltd., Money Gain International Co	18.82
Guangming Group Wumahe Furniture Co., Ltd	18.82
Inni Furniture	18.82
Mei Jia Ju Furniture Industrial (Shenzhen) Co. Ltd	216.01
Meikangchi (Nantong) Furniture Company Ltd	18.82
Nanjing Nanmu Furniture Co., Ltd	18.82
Po Ying Industrial Co	18.82
Qingdao Beiyuan-Shengli Furniture Co., Ltd., Qingdao Beiyuan Industry Trading Co. Ltd	18.82
Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd. and Red Apple Trading Co., Ltd	18.82
Shenyang Kunyu Wood Industry Co., Ltd	18.82
Shenzhen Xingli Furniture Co., Ltd	18.82
Tianjin First Wood Co., Ltd	18.82
Union Friend International Trade Co., Ltd	18.82
Winmost Enterprises Limited	18.82
Winny Overseas, Ltd	18.82
Yangchen Hengli Co., Ltd	18.82
Yichun Guangming Furniture Co., Ltd	18.82
Zhong Cheng Furniture Co., Ltd	18.82
PRC-Wide Rate	216.01

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For customers/importers of the respondents that did not report entered value, we have calculated customer/importer-specific antidumping duty assessment amounts based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in those transactions. For customers/importers of the respondents that reported entered value, we have calculated customer-specific antidumping duty assessment amounts based on customer/importer-specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1). For the companies receiving a separate rate that were not selected for individual review (*i.e.*, separate rate companies), we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any that are zero, *de minimis*, or based entirely on AFA, pursuant to section 735(c)(5)(B) of the Act. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of administrative and new shipper reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review and new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rates shown for those companies; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 216.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing these final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 11, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix II

Cross-Cutting Issues

Comment 1: Surrogate Country
A. Economic Comparability
B. Significant Producer
C. Financial Statements
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Comment 6: Indian Surrogate Values Information Has Been Provided for Teamway and the Dare Group
A. Effective Date
B. India & South Korea
C. Inherent Error in Calculation
Comment 7: Brokerage And Handling, Diesel Fuel, Water, Electricity, and Freight
Comment 8: Accurate Conversion Factors for Lumber and Board
Comment 9: Accurate Average Unit Values
Comment 10: Philippine Financial Statements
Comment 11: Treatment of Certain Expense Items in the Financial Ratios

III. Dare Group

Comment 12: Whether to Apply Partial AFA to the Dare Group's Purchases of Semi-Finished Furniture from Unaffiliated Suppliers
Comment 13: Incorrect Allocation for Indirect Materials, Labor, Energy, Water, and Scrap
Comment 14: Use of Disaggregated Factors of Production and Correct Market Economy Purchase Prices
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Comment 21: Clerical Errors
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Comment 25: Use Most Updated Datasets

IV. Teamway

Comment 26: Whether to Apply Total AFA to Teamway
Comment 27: Whether and How to Combine the FOP Datasets from May 5, 2008 and May 16, 2008
Comment 28: Whether to Apply an Adverse Inference to Value Merchandise Sold, but not Produced, During the POR
Comment 29: Valuation of Certain Subcontracted Factors
Comment 30: Bun Feet Variance
Comment 31: Packing Labor
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V. Starcorp

Comment 33: Assign Total AFA

[FR Doc. E8–19303 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of commerce.

SUMMARY: The Department of Commerce (''Department'') has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act''), that Woongjin Chemical Co. Ltd. (''Woongjin'') is the successor–in-interest to Saehan Industries Inc. (''Saehan''). As a result, Woongjin will be accorded the same treatment previously accorded to Saehan with regard to the antidumping duty order on polyester staple fiber (''PSF'') from the Republic of Korea (''Korea'') as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3853.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce issued an antidumping duty order on certain PSF from Korea. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Polyester Staple Fiber from Republic of Korea*, 65 FR 33807 (May 25, 2000). On April 23, 2008, Woongjin requested that the Department initiate a changed circumstances review of the antidumping duty order on PSF from Korea to determine that, for purposes of the antidumping law, Woongjin is the successor–in-interest to Saehan. On June 16, 2008, the Department initiated this review and made its preliminary finding that Woongjin is the successor–in-interest to Saehan, and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea*, 73 FR 33989 (June 16, 2008). We invited parties to comment on the preliminary results. We received no comments or requests for a hearing.

Scope of the Review

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.25 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Final Results of Changed Circumstances Review

For the reasons stated in the preliminary results, and because the Department did not receive any comments following the preliminary results of this review, the Department continues to find that Woongjin is the successor–in-interest to Saehan for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct CBP to suspend liquidation of all shipments of

the subject merchandise produced and exported by Woongjin entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice at 2.13 percent (i.e., Saehan's cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Woongjin participates.

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: August 12, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–19318 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Intent to Rescind Antidumping Duty Administrative Review In Part and Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Joy Zhang at (202) 482–1168 or James Terpstra at (202) 482–3965, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2007, United States Steel Corporation (''Petitioner'') and Nucor Corporation requested an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (''Indian Hot–Rolled''), which were produced or exported by Ispat Industries Limited (''Ispat''), JSW Steel Limited (''JSW''), Tata Steel Limited (''Tata''), and Essar Steel Limited (''Essar''). On January 28, 2008, the Department of Commerce (''the Department'') published a notice of initiation of antidumping duty administrative review of Indian Hot–Rolled for the period December 1, 2006, through November 30, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 73 FR 4829 (January 28, 2008) (*Initiation Notice*). The preliminary results are currently due no later than September 1, 2008.

Partial Rescission of Administrative Review with Respect to Ispat, JSW, and Tata

On February 25, 2008, the Department issued a memorandum informing the interested parties of the Department's intention to limit the number of companies it would examine in this review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the ''Act''). The Department indicated that its respondent selection would be made based on the entry data from U.S. Customs and Border Protection (''CBP'') for Indian Hot–Rolled during the period of review (''POR''). The Department set aside a period of seven calendar days for interested parties to raise issues regarding the use of CBP data for respondent selection in this review. *See* Memorandum to File, Re: ''2006–2007 Antidumping Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from India, '' Subject: ''Customs and Border Protection Data for Selection of Respondents for Individual Review,'' from Cindy Robinson, Senior Financial Analyst, through James Terpstra, Program Manager, and Melissa Skinner, Office Director, Office 3, AD/CVD Operations, dated February 25, 2008 (''Hot–Rolled Memo'').

On February 26–27, 2008, Ispat, Tata, and JSW each informed the Department that they did not have shipments of the subject merchandise to the United States during the POR. On March 3, 2008, Petitioner submitted its comments in response to the Hot–Rolled Memo stating that since the Department issued the Hot–Rolled Memo, Ispat, JSW, and Tata have each certified that they had no shipments of subject merchandise to the United States during the POR, and their assertions are confirmed by the CBP data. Therefore, Petitioner asserted that the Department should rescind the instant administrative review with respect to Ispat, JSW, and Tata.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, ''with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' We examined CBP entry data for the three exporters/manufacturers: Ispat, JSW, and Tata, and we are satisfied that the record indicates that there were no U.S. entries of subject merchandise from these three companies during the POR. Accordingly, following the Department's practice, we are preliminarily rescinding this review with respect to Ispat, JSW, and Tata. *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 72 FR 53527, 53530 (September 19, 2007), unchanged in final, *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479, 15480 (March 24, 2008).

After the preliminary partial rescission of Ispat, JSW, and Tata, only one respondent, Essar, remains in this review.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because we require additional time to analyze the sales and cost data submitted by Essar and issue supplemental questionnaires to the company. Therefore, we are extending the time period for issuing the preliminary results of review by 60 days. The preliminary results are now due no later than October 31, 2008. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751 of the Act and 19 CFR 351.213(d)(4).

Dated: August 14, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–19315 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip from Germany: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 20, 2008.

FOR FURTHER INFORMATION CONTACT: Joy Zhang at (202) 482–1168 or James Terpstra at (202) 482–3965, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 11389 (March 3, 2008), for the March 7, 2007, through February 29, 2008, administrative review of the antidumping duty order on brass sheet and strip from Germany. On March 28, 2008, the Department received a timely filed request for review from Wieland–Werke AG (''Wieland''). On April 25, 2008, the Department published in the **Federal Register** the *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (April 25, 2008), in which the Department initiated the administrative review of brass sheet and strip from Germany.

Rescission of Antidumping Administrative Review

On July 9, 2008, we received a timely filed submission from Wieland withdrawing its request for an administrative review. Wieland filed its withdrawal request within the deadline established by section 351.213(d)(1) of the Department's regulations. No other parties have requested a review of Wieland or any other producer or exporter of the subject merchandise. Therefore, we are rescinding the above–cited administrative review in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 14, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–19311 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ83

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a two-day Council meeting on September 3–4, 2008 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, September 3 beginning at 9 a.m., and Thursday, September 4, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, September 3, 2008

Following introductions and any announcements, the Council will swear in new and reappointed members as well as elect its Council Officers for 2008–2009. During the morning session, the Council will discuss Amendment 3 to the Skate Fishery Management Plan (FMP). They will approve change in the scope of the amendment to include (?) a rebuilding plan to address the overfished condition of smooth skate and to address overfishing of thorny skate. The Council will then review the Scientific and Statistical Committee's comments on National Standard 1 Guidelines proposed by the National Marine Fisheries Service and finalize Council comments. The National Standard 1 discussion will continue into the afternoon session followed by discussion of the Northeast Multispecies Amendment 16. Dr. Paul Rago from the Northeast Fisheries Science Center will present a summary of the results of the Groundfish Assessment Review Meeting (GARM III) and the Council will review the stock status and biological reference

points for all groundfish stocks. Also, on the agenda will be the discussion of the results of the Transboundary Resource Assessment Committee Meeting for eastern Georges Bank cod, haddock, and Georges Bank yellowtail flounder and the Groundfish Committee will give its report and ask the Council to develop management options for Amendment 16; discussion will include modifications as necessary to rebuilding plans, adoption of new rebuilding plans if necessary, and identification of management measures for further development.

Thursday, September 4, 2008

Following a brief opportunity for public comments on items not listed on the agenda, the Council will continue its discussion of Amendment 16 from the previous day until the Council meeting adjourns for the day.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 15, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19287 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ83

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

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FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

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Wednesday, September 3, 2008

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Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 15, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19288 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ84

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet September 7–12, 2008. The Council meeting will begin on Monday, September 8, at 8 a.m., reconvening each day through Friday, September 12. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9 a.m. on Monday, September 8 to address litigation and personnel matters. The Council will meet as late as necessary

each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Doubletree Hotel Boise Riverside, 2900 Chinden Boulevard, Boise, ID 83714; telephone: (208) 343–1871.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period

Comments on Non-Agenda Items

C. Administrative Matters

1. Future Council Meeting Agenda and Workload Planning
2. Process for Council Approval of Regulations Implementing Council Recommendations (''Deeming Process'')
3. Update and Communication of Research and Data Needs
4. Legislative Matters
5. Implementation of the Magnuson-Stevens Reauthorization Act
6. Approval of Council Meeting Minutes
7. Fiscal Matters
8. Membership Appointments and Council Operating Procedures
9. Future Council Meeting Agenda and Workload Planning (continued)

D. Salmon Management

1. Salmon Methodology Review
2. Progress Report on Causes of the 2008 Salmon Failure
3. Central Valley Salmon Recovery Plan

E. Pacific Halibut Management

1. Pacific Halibut Bycatch Estimate for International Pacific Halibut Commission Adoption
2. Pacific Halibut Catch Apportionment Methodology
3. Proposed Changes to Catch Sharing Plan and 2009 Annual Regulations

F. Enforcement

Enforcement Activity Report

G. Habitat

Current Habitat Issues

H. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. Changes to Routine Management Measures for 2009–2010 Season
3. Fishery Management Plan Amendment 2: High Seas Shallow Set Longline Management

I. Groundfish Management

1. Consideration of Inseason Adjustments
2. Groundfish Essential Fish Habitat Review Process
3. National Marine Fisheries Service Report
4. Fishery Management Plan Amendment 22: Open Access License Limitation
5. Stock Assessment Planning for 2011–2012 Groundfish Fishery Decision Making
6. Final Adoption of Exempted Fishing Permits for 2009
7. Final Consideration of Inseason Adjustments (if Needed)

SCHEDULE OF ANCILLARY MEETINGS

Sunday, September 7, 2008	.
Scientific and Statistical Committee	8 a.m..
Budget Committee	2:30 p.m..
Legislative Committee	3:30 p.m..
Monday, September 8, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Highly Migratory Species Advisory Subpanel	8 a.m..
Highly Migratory Species Management Team	8 a.m..
Scientific and Statistical Committee	8 a.m..
Habitat Committee	8:30 a.m..
Tuesday, September 9, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Essential Fish Habitat Review Committee	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Highly Migratory Species Advisory Subpanel	8 a.m..
Highly Migratory Species Management Team	8 a.m..
Wednesday, September 10, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Essential Fish Habitat Review Committee	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Thursday, September 11, 2008	.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Enforcement Consultants	As needed.
Friday, September 12, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Washington State Delegation	7 a.m..
Groundfish Management Team	8 a.m..

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 15, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19291 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ80

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of the South Atlantic Fishery Management Council's South Atlantic Habitat and Ecosystem Internet Map Server (IMS) Refinement Workshop.

SUMMARY: The South Atlantic Fishery Management Council (Council) is conducting a South Atlantic Habitat and Ecosystem IMS Refinement Workshop in St. Petersburg, FL.

DATES: The workshop will take place September 9 - 10, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The workshop will be held at the Florida Fish and Wildlife Research Institute, 100 Eighth Avenue, S.E., St. Petersburg, FL; telephone: (727) 896–8626.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The IMS Workshop will take place from 8:30 a.m. - 5 p.m. on September 9, 2008, and from 8:30 a.m. - 1 p.m. on September 10, 2008. The Workshop is designed to continue the refinement of the Council's Internet Map Server as a support tool for Ecosystem-based management. Invited workshop participants will review the present structure of the IMS and future capabilities, identify Geographic Information Systems (GIS) needs supporting management, research, and regional collaborations and provide recommendations. Participants will also identify additional data and GIS for possible inclusion in the IMS and provide recommendations for enhancing and refining the functional capabilities of the IMS to better support local, state, and other regional habitat and ecosystem GIS needs.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: August 15, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19232 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 0808141100–81101–01]

Science Advisory Board; Preliminary Report of the NOAA Science Advisory Board Fire Weather Research Working Group

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA Research (OAR) publishes this notice on behalf of the NOAA Science Advisory Board (SAB) to announce the availability of the preliminary draft report of the SAB Fire Weather Research Working Group's (here called the FWRWG) for public comment. The preliminary draft report

of the FWRWG has been prepared pursuant to the request initiated from NOAA for an external panel of experts to carry out an independent review of current fire weather research being conducted by NOAA and other federal agencies, and in universities and elsewhere, and examine how the results of that research are being further developed and transitioned to operations by NOAA.

DATES: Comments on this preliminary report must be received by 5 p.m. on September 19, 2008.

ADDRESSES: The Preliminary Draft Report of the FWRWG will be available on the NOAA Science Advisory Board Web site at *http://www.sab.noaa.gov/Reports/FWRWG*.

The public is encouraged to submit comments electronically to *noaa.sab.comments@noaa.gov*. For individuals who do not have access to the Internet, comments may be submitted in writing to: NOAA Science Advisory Board (SAB), c/o Dr. Cynthia Decker, 1315 East-West Highway–R/SAB, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, 1315 East-West Highway–R/SAB, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–734–1459) during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

SUPPLEMENTARY INFORMATION: As part of its charge, the FWRWG was tasked to examine fire weather-related research efforts conducted by groups external to NOAA and identify areas of commonality where research activities might be leveraged for mutual benefit. The FWRWG was requested to develop findings and recommendations to ensure these research results lead to improved operational fire weather information and forecasts and to examine related research within NOAA not necessarily specific to fire but which could result in improved fire weather services or other NOAA emergency support operations. The complete terms of reference for the working group can be found at *http://www.sab.noaa.gov/Working_Groups/current/fireweather/FWRWG_terms.pdf*.

The SAB is chartered under the Federal Advisory Committee Act and is the only Federal Advisory Committee with the responsibility to advise the Under Secretary on long- and short-term strategies for research, education, and application of science to resource management and environmental assessment and prediction.

NOAA welcomes all comments on the content of the preliminary draft report. We also request comments on any inconsistencies perceived within the report, and possible omissions of important topics or issues. This preliminary draft report is being issued for comment only and is not intended for interim use. For any shortcoming noted within the preliminary report, please propose specific remedies. Suggested changes will be incorporated where appropriate, and a final report will be posted on the SAB Web site.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of comments and assure that all comments are appropriately considered. Overview comments should be provided first and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow any overview comments and should identify the page and line numbers to which they apply. Please number each page of your comments.

Dated: August 14, 2008.

Terry Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E8–19210 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ79

Marine Mammals; File No. 13545

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Ocean Alliance, Inc. (Responsible Party: Iain Kerr), 191 Weston Road, Lincoln, MA 01773, has applied in due form for a permit to conduct research on sperm (*Physeter macrocephalus*), blue (*Balaenoptera musculus*), Bryde's (*B. edeni*), dwarf sperm (*Kogia sima*), false killer (*Pseudorca crassidens*), fin (*B. physalus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), killer (*Orcinus orca*), minke (*B. acutorostrata*), pilot (*Globicephala* spp.), pygmy sperm (*K. breviceps*), sei (*B. borealis*), southern right (*Eubalaena australis*), northern right (*E. glacialis*), Cuvier's beaked (*Ziphius cavirostris*), and other beaked (*Mesoplodon* spp.) whales, common dolphins (*Delphinus delphis*), as well as elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) coral, and import specimens from these species for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 19, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

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. 13545.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), 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).

Ocean Alliance proposes to conduct research over a five-year period to determine contaminant levels and culture cells from cetaceans and coral while concurrently collecting data on abundance, movement and distribution patterns, habitat use, energetics, behaviors, and stock and social structures. The applicant requests authorization to conduct research during vessel surveys on live cetaceans and coral and collect tissues from dead, stranded cetaceans in U.S. waters and on the high seas. Field research activities would include biopsy sampling, collection of sloughed skin

and feces, photo-identification, videography, passive acoustic recording, focal follows, and behavioral observation during vessel surveys for up to 250 sperm whales annually and 20 animals annually for each of the above remaining species, except southern right whales. The applicant would also import from foreign waters 150 sperm whale samples per year and 20 samples per year each for all other identified species. This research would help determine: (1) which classes of pollutants are elevated around the world; (2) which pollutants pose the largest risk to whales; (3) which responses made by whales to pollutants are similar to responses made by humans; (4) the locations of pollution hot spots around the world; and (5) the population and behavioral dynamics of these species. Research would occur in U.S. waters and the high seas of the Pacific and Atlantic Oceans, including the Gulf of Maine, Mexico and the Caribbean Sea, the territorial waters of Mexico, Indian Ocean, and Mediterranean Sea.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors. Documents may be reviewed in the following locations:

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;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Dated: August 14, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–19313 Filed 8–19–08; 8:45 am]

BILLING CODE 3510–22–S

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1486]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing its September, 2008 meeting.

DATES: Friday, September 12, 2008, 9 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place at the U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Coordinating Council at *http://www.juvenilecouncil.gov* or contact Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [**Note:** this is not a toll-free telephone number], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *http://www.JuvenileCouncil.gov.,* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. Up to nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

Meeting Agenda

The agenda for this meeting will include: (a) A presentation on and discussion of research on boys sponsored by the U.S. Department of Health and Human Services; (b) updates on Council Partnership Projects; and (c) applicable legislative and program updates; announcements and other business. The meeting is open to the public.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *http://www.juvenilecouncil.gov/meetings.html* no later than September 5, 2008. Should problems arise with Web registration, call Daryel Dunston at 240–221–4343 or send a request to register for the September 12, 2008, Council meeting to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and e-mail information and send to his attention either by fax at: 301–945–4295 or by e-mail to *ddunston@edjassociates.com.* [**Note:** these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments and questions by Friday, September 5, 2008, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements.

Dated: August 14, 2008.

Gregory Harris,

Principal Deputy Administrator.

[FR Doc. E8–19263 Filed 8–19–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Pinon Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to Pinon Technologies, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned invention(s) described in U.S. Patent Number 5,962,863 entitled ''Laterally Disposed Nanostructures of Silicone on Insulating Substrate'', issue date October 4, 1999.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 4, 2008.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center, San Diego, Code 73120, 53560 Hull St., San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Stephen H. Lieberman, Ph.D., Office of Research and Technology Applications, Space and Naval Warfare Systems Center, San Diego, Code 73120, 53560 Hull St., San Diego, CA 92152–5001, *telephone:* 619–553–2778, *E-Mail: stephen.lieberman@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: August 14, 2008.

T. M. Cruz,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–19244 Filed 8–19–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 20, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 15, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Revision.

Title: Charter Schools Program (CSP) Grant Award Database.

Frequency: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 68.

Burden Hours: 110.

Abstract: This request is for renewal of OMB approval to collect data necessary for the Charter Schools Program (CSP) Grant Award Database. This current data collection is being coordinated with the EDFacts initiative to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED) through the Education Data Exchange Network (EDEN). Specifically, under the current data collection, ED collects CSP grant award information from grantees (State agencies and some schools) to create a new database of current CSP-funded charter schools and award amounts. Once complete, ED merges performance information extracted from the EDEN database with the database of CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic performance, financial integrity, and program effectiveness.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3780. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–19264 Filed 8–19–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 19, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer,

Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 14, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Pre-Elementary Education Longitudinal Study (PEELS).

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 215.

Burden Hours: 108.

Abstract: This ICR is for Wave 5 data collection for the Pre-Elementary Education Longitudinal Study (PEELS). This study was begun in 2003 and includes a sample of approximately 3,100 youth who were aged 3 through 5 and receiving special education services at the beginning of the study. Wave 5 data collection will consist of direct and indirect child assessments. This will be the last round of data collection for PEELS and will focus primarily on describing how children who received preschool special education services perform in elementary school.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3711. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–19265 Filed 8–19–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1121–082]

Pacific Gas and Electric Company; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene and Protests

August 13, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license.

b. *Project No.:* 1121–082.

c. *Date Filed:* July 21, 2008.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Battle Creek Hydroelectric Project.

f. *Location:* On Battle Creek, the North Fork and South Fork Battle Creek in Shasta and Tehama Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Liv K. Imset, Senior License Coordinator, Pacific Gas and Electric Company, P.O. Box No. 770000, San Francisco, CA 94177; (415) 973–1066.

i. *FERC Contact:* CarLisa Linton-Peters, telephone (202) 502–8416; e-mail: *carlisa.linton-peters@ferc.gov.*

j. Deadline for filing comments, motions to intervene and protest is September 30, 2008.

Please include the project number (P–1121) on any comments or motions filed. All documents (an original and eight copies) must be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene, protests, comments and recommendations may be filed electronically via the Internet in lieu of paper filings, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Pacific Gas and Electric Company (licensee) is requesting that its license for the Battle Creek Hydroelectric Project be amended to support the Battle Creek Salmon and Steelhead Restoration Project (Restoration Project). The Chinook salmon and steelhead are federally-listed species. The Restoration Project is a collaborative effort to restore fish habitat on Battle Creek and some of its tributaries through modification of the project facilities and operations, including instream flow releases. This collaborative effort is between PG&E, the U.S. Department of the Interior, Bureau of Reclamation, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the California Department of Fish and Game.

The Restoration Project will reestablish approximately 42 miles total of prime salmon and steelhead habitat

in the North and South Forks of Battle Creek, plus an additional six miles of habitat on the tributaries of Battle Creek. The Restoration Project will be accomplished in three phases. The licensee is filing this license amendment application for approval and implementation of Phase 1A of the Restoration Project. Proposed work for Phase 1A includes fish passage improvements on North Fork Battle Creek by: (1) Installing fish screens and ladders at the North Battle Creek Feeder and Eagle Canyon Diversion Dams; (2) installing the 4,500-foot long Eagle Canyon Canal pipeline; (3) removing the Wildcat Diversion Dam and appurtenant conveyance systems; and (4) modifying the Asbury Diversion Dam by installing an upstream fish migration barrier and changing maintenance procedures to eliminate use of the low-level outlet.

The licensee has submitted the Battle Creek Salmon and Steelhead Restoration Project Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR), prepared in July 2005, as part of its application. The referenced EIS/EIR was a collaborative effort to fulfill National Environmental Policy Act (NEPA) and California Environmental Quality Act requirements. The EIS/EIR was a collaborative effort between PG&E, the Bureau of Reclamation, California State Water Resources Control Board, California Bay-Delta Authority, and the Federal Energy Regulatory Commission (Commission). The Commission intends to use the 2005 EIS/EIR to meet the NEPA requirements under the proposed action to amend the Battle Creek Project. The EIS/EIR was previously public noticed on July 29, 2005 and the document is available for review at the Restoration Projects Web site (link: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=99*).

l. *Location of the Application:* A copy of the licensee's filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free at 1–866–208–3372 or e-mail *ferconlinesupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address listed in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', or ''RECOMMENDATIONS'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–19207 Filed 8–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 12, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–116–000.
Applicants: Ridgeline Energy LLC.
Description: Ridgeline Energy LLC *et al.* submits a joint application for authorization for confidential treatment, expedited consideration and waivers.
Filed Date: 08/08/2008.
Accession Number: 20080812–0094.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: EC08–117–000.
Applicants: Harbinger Capital Partners Master Fund I.
Description: Harbinger Capital Partners Master Fund I, Ltd *et al.* submits an application for approval pursuant to Section 203 of the Federal Power Act.
Filed Date: 08/08/2008.
Accession Number: 20080812–0074.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–3184–011; ER00–494–005.
Applicants: TransAlta E. Mktg US; TransAlta Centralia Generation LLC.
Description: TransAlta Energy Marketing, TransAlta Centralia Generation Supplement to Updated Market Power Analysis.
Filed Date: 08/07/2008.
Accession Number: 20080807–5085.
Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER99–2369–005.
Applicants: Alliance for Cooperative Energy Services.
Description: Alliance for Cooperative Energy Services Power Marketing, LLC's correction to the 6/23/08 filing of Fourth Revised Sheet 2 to their Rate Schedule 1.
Filed Date: 08/05/2008.
Accession Number: 20080808–0094.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 26, 2008.

Docket Numbers: ER01–48–012.
Applicants: Powerex Corp.
Description: Powerex Corp. Notice of Non-Material Change in Status.
Filed Date: 08/07/2008.
Accession Number: 20080807–5084.
Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER01–316–029.
Applicants: ISO New England Inc.
Description: ISO New England, Inc submits its Index of Customers for the second quarter of 2008 under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services.
Filed Date: 07/29/2008.
Accession Number: 20080811–0073.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 19, 2008.

Docket Numbers: ER03–191–003.
Applicants: Peaker LLC.
Description: Peaker, LLC submits substitute tariff sheets (Substitute Original Sheet 1 *et al.* to First Revised Rate Schedule 1) to conform to the citation requirements of Order 697–A.

Filed Date: 08/08/2008.
Accession Number: 20080811–0102.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER03–983–014.
Applicants: Fox Energy Company, LLC.
Description: Fox Energy Company, LLC submits relined versions of Original Sheet 1 to FERC Electric Tariff, Substitute First Revised Volume 1 to be replaced with the tariff sheets filed on 7/30/08 pursuant to Order 697–A.
Filed Date: 08/07/2008.
Accession Number: 20080811–0001.
Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER06–560–002.
Applicants: Credit Suisse Energy LLC.
Description: Credit Suisse Energy, LLC submits Substitute First Revised Rate Schedule FERC 1.
Filed Date: 08/05/2008.
Accession Number: 20080808–0095.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 26, 2008.

Docket Numbers: ER06–713–002.
Applicants: Weyerhaeuser Company.
Description: Weyerhaeuser Company submits Substitute First Revised Sheet 1 *et al.* to Rate Schedule FERC 1.
Filed Date: 08/07/2008.
Accession Number: 20080811–0004.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER06–1364–001.
Applicants: International Paper Company.
Description: International Paper Company submits Substitute First Revised Sheet 1 *et al.* to FERC Electric Tariff 1.
Filed Date: 08/07/2008.
Accession Number: 20080811–0003.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER06–1419–002.
Applicants: MeadWestvaco Virginia Corporation.
Description: MeadWestvaco Virgina Corporation submits Substitute First Revised Sheet 1 to Rate Schedule FERC 1, effective 9/18/07.
Filed Date: 08/01/2008.
Accession Number: 20080805–0210.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER07–466–002.
Applicants: MET MA, LLC.
Description: MET MA, LLC submits and amendment to its application filed on 6/30/08 for Determination of Category 1 Status under Order 697.
Filed Date: 08/05/2008.
Accession Number: 20080808–0096.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 26, 2008.

Docket Numbers: ER07–515–001.
Applicants: Domtar Corporation.
Description: Domtar Corporation submits Substitute First Revised Sheets 1 and 2 to Rate Schedule FERC 1 to clarify its 6/27/08 triennial market power update etc.
Filed Date: 08/07/2008.
Accession Number: 20080811–0002.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–303–002.
Applicants: Williams Gas Marketing, Inc.
Description: Williams Gas Marketing, Inc submits the market-based rate tariff and Appendix B which were inadvertently omitted from the 6/30/08 filing.
Filed Date: 08/06/2008.
Accession Number: 20080808–0090.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–567–001.
Applicants: Southern California Edison Company.
Description: Southern California Edison submits a new Master Fringe Service Agreement between SCE and the City of Anaheim, Rate Schedule FERC 476.
Filed Date: 08/04/2008.
Accession Number: 20080808–0085.
Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: ER08–611–002; ER08–613–002.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp submits their Refund Report.
Filed Date: 08/06/2008.
Accession Number: 20080808–0086.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–949–002.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits an Alternate Pro Forma Sheet 30 to Westar's pro forma Formula Rate Agreement for Full Requirements Electric Service between Westar and the City of Alma, Kansas etc.
Filed Date: 08/11/2008.
Accession Number: 20080812–0067.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER08–950–001.
Applicants: ISO New England Inc., Northeast Utilities Service Co.
Description: Western Massachusetts Electric Co *et al.* submits response to FERC's 7/8/08 Questions.
Filed Date: 08/07/2008.
Accession Number: 20080811–0093.
Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–1042–002; ER08–1055–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits its response to FERC's 7/30/08 request for additional information re Amended Contigency Reserve Sharing Group Agreement.
Filed Date: 08/06/2008.
Accession Number: 20080811–0091.
Comment Date: 5 p.m. Eastern Time on Friday, August 15, 2008.

Docket Numbers: ER08–1056–001; EL08–51–001.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits compliance filing.
Filed Date: 08/08/2008.
Accession Number: 20080812–0076.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1085–001.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits revised sheets to its Open Access Transmission Tariff pursuant to FERC's 8/8/08 Order.
Filed Date: 08/11/2008.
Accession Number: 20080812–0068.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: ER08–1240–001.
Applicants: MH Partners LP.
Description: MH Partners LP submits supplement to its Application for Order Accepting Initial Rate Schedule, Waiving Regulations, Granting Blanket Approvals and Expedited Action etc.
Filed Date: 08/06/2008.
Accession Number: 20080811–0077.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1353–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits existing transmission contracts rate filing Volume 1.
Filed Date: 08/04/2008.
Accession Number: 20080808–0236.
Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: ER08–1354–001.
Applicants: Occidental Chemical Corporation.
Description: Occidental Chemical Corporation submits an amendment to their Application in order to remove the language re sales into Southwest Power Pool's Energy Imbalance Service Market from its proposed tariff.
Filed Date: 08/08/2008.
Accession Number: 20080812–0075.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1361–000.

Applicants: New York Power Authority.

Description: New York Power Authority *et al.* submits an executed Large Generator interconnection Agreement among the NYISO as the Transmission Provider, NYPA as the Transmission Owner, and Noble Altona Windpark as the Developer.

Filed Date: 08/06/2008.

Accession Number: 20080807–0214.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1362–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits a notice of cancellation for an interconnection service agreement that has been superseded.

Filed Date: 08/06/2008.

Accession Number: 20080807–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1363–000.

Applicants: SAC. Energy Investments, LP.

Description: SAC Energy Investments, LP submits a Notice of Cancellation of its market-based rate schedule, Electric Rate Schedule FERC 1, FERC accepted originally on 10/25/06.

Filed Date: 08/06/2008.

Accession Number: 20080807–0212.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1364–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp. submits an amendment to its market Redesign and Technology Upgrade version of the CAISO Tariff.

Filed Date: 08/06/2008.

Accession Number: 20080807–0211.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1365–000.

Applicants: E. ON U.S. LLC.

Description: E. ON U.S. LLC *et al.* submits proposed revisions to the LG&E/KU joint Open Access Transmission Tariff.

Filed Date: 08/06/2008.

Accession Number: 20080807–0210.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1366–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits First Revised Long-Term Point-to-Point Transmission Service Agreement dated 7/21/08, between Idaho Power and PacifiCorp for transmission service provided to the Point of Delivery etc.

Filed Date: 08/06/2008.

Accession Number: 20080807–0209.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1367–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits revised network integration transmission service agreement executed on 10/26/07, between Idaho Power and Bonneville Power Admin Serving Oregon Trail Electric Cooperative etc.

Filed Date: 08/06/2008.

Accession Number: 20080807–0208.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: ER08–1368–000.

Applicants: Carolina Power & Light Company d/b/a Pro.

Description: Carolina Power & Light Co. submits proposed modifications to the Joint Open Access Transmission Tariff, in compliance with FERC's 7/2/08 order.

Filed Date: 08/07/2008.

Accession Number: 20080808–0229.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–1369–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC submit proposed revisions to their Joint Operating Agreement.

Filed Date: 08/07/2008.

Accession Number: 20080808–0230.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–1370–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc. *et al.* submits proposed revisions to their Open Access Transmission Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Third Revised 1, etc.

Filed Date: 08/07/2008.

Accession Number: 20080811–0075.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–1371–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revised pages to its Open Access Transmission Tariff, intended to implement a rate change for Westar Energy, Inc., which is a transmission owner and pricing zone etc.

Filed Date: 08/07/2008.

Accession Number: 20080811–0074.

Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 2008.

Docket Numbers: ER08–1372–000.

Applicants: E. ON U.S. LLC.

Description: E. ON U.S. LLC on behalf of Louisville Gas and Electric Company *et al.* submits a proposed amendment to the LG&E/KU joint Open Access Transmission Tariff.

Filed Date: 08/08/2008.

Accession Number: 20080811–0078.

Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1373–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits proposed revisions to their Control Area Services and Operations Tariff.

Filed Date: 08/08/2008.

Accession Number: 20080812–0092.

Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1375–000.

Applicants: Midwest ISO Transmission Owners.

Description: Midwest ISO Transmission Owners request for waiver/suspension and notice of cancellation of ancillary service scheduled of open access transmission tariffs.

Filed Date: 08/08/2008.

Accession Number: 20080812–0071.

Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1376–000.

Applicants: Southwest Power Pool.

Description: Southwest Power Pool Inc submits a partially executed Letter Agreement to amend a Large Generator Interconnection Agreement with Cloud County Wind Farm, LLC.

Filed Date: 08/08/2008.

Accession Number: 20080812–0069.

Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1377–000.

Applicants: Xcel Energy Services Inc.

Description: NSP Companies submits proposed amendments to certain service agreements subject to Rate Schedule Transmission Service TM–1 and to the TM–1.

Filed Date: 08/08/2008.

Accession Number: 20080812–0096.

Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1378–000.

Applicants: PJM Transmission Owners.

Description: PJM Interconnection, LLC submits Second Revised Sheet 224LL *et al.* to FERC Electric Tariff, Sixth Revised Volume 1 containing clarifications to Section 217.3 of PJM Open Access Transmission Tariff.

Filed Date: 08/08/2008.

Accession Number: 20080812–0073.

Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1379–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits revised tariff sheets amending Attachment Z1 and other relevant provisions of the SPP Open Access Transmission Tariff.
Filed Date: 08/08/2008.
Accession Number: 20080812–0070.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1380–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits revised pages to their Bylaws intended to incorporate the modifications that have been accepted by FERC.
Filed Date: 08/08/2008.
Accession Number: 20080812–0072.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: ER08–1381–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with The Vision Power System, Inc., and Potomac Electric Power Company executed on 7/11/08.
Filed Date: 08/11/2008.
Accession Number: 20080812–0066.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 2, 2008.

Docket Numbers: ER08–1382–000.
Applicants: American Electric Power Service Corporation.
Description: AEP Operating Companies requests acceptance of a seventh revision to the Interconnection and Local Delivery Agreement between American Electric Power Service Corp., and Blue Ridge Power Authority.
Filed Date: 08/11/2008.
Accession Number: 20080812–0065.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 2, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–30–001.
Applicants: Ohio Valley Electric Corporation.
Description: Order No. 890 OATT Filing of Ohio Valley Electric Corporation under Docket No. OA07–30.
Filed Date: 08/08/2008.
Accession Number: 20080808–5020.
Comment Date: 5 p.m. Eastern Time on Friday, August 29, 2008.

Docket Numbers: OA07–37–002.
Applicants: E. ON U.S. LLC.
Description: E ON US, LLC submits revised tariff sheets for Attachment L to the Louisville Gas and Electric Co./Kentucky Utilities Co. Open Access Transmission Tariff under OA07–37.
Filed Date: 08/06/2008.
Accession Number: 20080808–0093.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: OA07–100–001.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power, Inc., submits a revised version of Joint Tariff Attachment C reflect a modified TRM assessment methodology under OA07–100.
Filed Date: 08/06/2008.
Accession Number: 20080808–0091.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: OA08–124–000.
Applicants: Idaho Power Company.
Description: Idaho Power Co.'s Open Access Transmission Tariff (OATT) Compliance Filing pursuant to Order 890–A and 890–B.
Filed Date: 08/07/2008.
Accession Number: 20080807–5086.
Comment Date: 5 p.m. Eastern Time on Thursday, August 28, 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. E8–19281 Filed 8–19–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 15, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP97–81–049.
Applicants: Kinder Morgan Interstate Gas Trans. LLC.
Description: Kinder Morgan Interstate Gas Transmission, LLC submits the amended and restated negotiated rate agreement and Twenty-Third Revised Sheet 4G.01 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1–A.
Filed Date: 08/14/2008.
Accession Number: 20080815–0052.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 26, 2008.

Docket Numbers: RP02–361–072.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System submits Original Sheet 8.02n *et al.* to FERC Gas Tariff, Original Volume 1, to become effective 8/7/08.
Filed Date: 08/07/2008.
Accession Number: 20080808–0228.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 20, 2008.

Docket Numbers: RP07–174–005.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits Tenth Revised Sheet 216 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to become effective 9/1/08.

Filed Date: 08/12/2008.
Accession Number: 20080814–0052.
Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP07–340–006.
Applicants: Columbia Gas Transmission Corporation.
Description: Columbia Gas Transmission Corporation submits Seventh Revised Sheet 390 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to become effective 9/1/08.
Filed Date: 08/12/2008.
Accession Number: 20080814–0051.
Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP08–421–001.
Applicants: Petal Gas Storage, L.L.C.
Description: Petal Gas Storage, LLC submits its FERC Gas Tariff 1 tariff sheets in appendix A to be effective 7/25/08.
Filed Date: 08/13/2008.
Accession Number: 20080814–0282.
Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP08–497–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Transwestern Pipeline Company, LLC submits Sixth Revised sheet 5 *et al.*, to become effective 10/1/08.
Filed Date: 08/12/2008.
Accession Number: 20080813–0299.
Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP08–498–000.
Applicants: CenterPoint Energy—Mississippi River.
Description: CenterPoint Energy—Mississippi River Transmission Corp submits Sixty-Third Revised Sheet 5 *et al.* to FERC Gas Tariff, Third Revised Volume 1.
Filed Date: 08/14/2008.
Accession Number: 20080815–0053.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 26, 2008.

Docket Numbers: RP08–499–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits Twenty-Second Revised Sheet 4 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to become effective 10/1/08.
Filed Date: 08/14/2008.
Accession Number: 20080815–0054.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 26, 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 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. E8–19289 Filed 8–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–404–000]

MarkWest Pioneer, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Arkoma Connector Pipeline Project

August 13, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) of the Arkoma Connector Pipeline Project proposed by MarkWest Pioneer, L.L.C. (MarkWest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of MarkWest's proposed Arkoma Connector Pipeline Project (Project), consisting of about 50.1 miles of 24-inch-diameter pipeline in Coal, Atoka, and Bryan Counties, Oklahoma, the new 14,200-horsepower (hp) Origin Compressor Station in Coal County, Oklahoma; 5,300-hp Midline Compressor Station in Atoka County, Oklahoma; pig launcher and receiver facilities in Coal and Bryan Counties, Oklahoma, respectively; and metering facilities in Bryan County, Oklahoma.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies, interested individuals, affected landowners, newspapers, libraries, and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects,

reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC, on or before September 15, 2008.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP08–404–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(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.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–19208 Filed 8–19–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–429–000]

Trunkline LNG Company, LLC; Notice of Technical Conference

August 13, 2008.

Take notice that the Commission will convene a technical conference in the above-referenced proceeding on Tuesday, September 9, 2008, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will address all issues raised by Trunkline LNG Company, LLC's (TLNG) June 30, 2008 filing in the referenced docket. Most significantly, TLNG should be prepared to fully explain its methodology for determining the throughput projections it uses in calculating its Fuel Reimbursement Percentages and Electric Power Cost Adjustments. Any party proposing alternatives to TLNG's proposals should be prepared to fully support its position.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Sandra Elliott at (202) 502–8694 or e-mail *Sandra.Elliott@ferc.gov.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–19206 Filed 8–19–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0151; FRL–8706–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Standardized Permit for RCRA Hazardous Waste Management Facilities (Renewal), EPA ICR Number 1935.03, OMB Control Number 2050–0182

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before *September 19, 2008.*

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0151, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental

Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeff Gaines, Office of Solid Waste, (5303P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–8655; *fax number:* 703–308–8617; *e-mail address: gaines.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 27, 2008 (73 FR 16299), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0151, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Standardized Permit for RCRA Hazardous Waste Management Facilities (Renewal).

ICR numbers: EPA ICR No. 1935.03, OMB Control No. 2050–0182.

ICR Status: This ICR is scheduled to expire on August 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the authority of sections 3004, 3005, 3008 and 3010 of the Resource Conservation and Recovery Act (RCRA), as amended, the U.S. Environmental Protection Agency is finalizing revisions to the RCRA hazardous waste permitting program to allow a ''standardized permit.'' The standardized permit is available to facilities that generate hazardous waste and routinely manage the waste on-site in non-thermal units such as tanks, containers, and containment buildings. This ICR presents a comprehensive description of the information collection requirements for owners and operators submitting applications for a standardized permit or a standardized permit modification.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 82 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for-profit.

Estimated Number of Respondents: 866.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 15,045.

Estimated Total Annual Cost: $1,203,688, includes $592,029 for labor and $611,659 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 608 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This slight increase is due to an increase in the annual number of responses from 175 to 184.

Dated: August 14, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–19334 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0525; FRL–8379–4]

Carbaryl; Notice of Receipt of Requests to Voluntarily Cancel or to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by various registrants to voluntarily amend their registrations to terminate uses of certain products containing carbaryl, or to eliminate certain application methods for carbaryl products. The requests would terminate carbaryl use in or on wheat, millet, cotton, and fresh/succulent shelled beans and peas (crop subgroup 6B); preplant drench or dip treatments of seedlings or seed pieces; use on poultry or in or on poultry premises/dwellings; all use on pets (dogs, cats and other pets) except for flea collars, use on pet premises, use in or on pet sleeping quarters; and all indoor applications. These requests would also terminate the use of dust formulations in or on agricultural crops, application of granular formulations to leafy vegetables (except Brassica), ultra-low volume (ULV) applications for adult mosquito control, and all applications by backpack sprayers. Last, the requests

would terminate broadcast application of liquid formulations of carbaryl to residential lawns. The requests would not terminate the last carbaryl products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before September 19, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0525, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0525. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and to Amend Registrations to Terminate Uses

This notice announces receipt by EPA of requests from several registrants, listed in Table 2 of Unit III. to amend several carbaryl product registrations to terminate certain uses and eliminate certain application methods. Carbaryl is a broad-spectrum insecticide used on a variety of food and feed crops, ornamentals, turf, pasture, and

rangeland. In letters dated from July 22 to August 4, 2008, registrants of carbaryl products requested EPA to amend the product registrations identified in Table 1 of this notice to terminate certain uses and eliminate certain application methods. Specifically, these registrants are no longer supporting carbaryl use in or on wheat, millet, cotton, and fresh/succulent shelled beans and peas (crop subgroup 6B); preplant drench or dip treatments of seedlings or seed pieces; use on poultry or in or on poultry premises/dwellings; all use on pets (dogs, cats and other pets) except for flea collars, use on pet premises, use in or on pet sleeping quarters; and all indoor applications. Registrants are no longer supporting the use of dust formulations in or on agricultural crops, application of granular formulations to leafy vegetables (except Brassica), ultra-low volume (ULV) applications for adult mosquito control, and all applications by backpack sprayers. Last, Bayer CropScience is requesting termination of the broadcast application of liquid carbaryl products to residential lawns. (This use has previously been removed from all technical and manufacturing use product labels.) The complete lists of affected registrations and registrants are identified in Tables 1 and 2, respectively. EPA's action on these requests will not terminate the last carbaryl products registered in the United States, or the last pesticide products registered in the United States for these uses.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from various registrants to amend certain carbaryl product registrations to terminate various uses. The affected products, uses, and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

All of the carbaryl registrants listed in Table 2 have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling or amending the affected registrations.

TABLE 1.—CARBARYL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENTS

Registration Number	Product Name	Uses Being Terminated and/or Application Methods Being Eliminated
239-1349	Ortho Sevin 5 Dust	Poultry and poultry premises; domestic pets and premises
239-2181	Ortho Sevin Garden Dust	Domestic pets and premises; succulent/fresh beans and peas (subgroup 6B)
239-2514	Get-A-Bug Snail, Slug and Insect Killer	Succulent/fresh beans and peas (subgroup 6B); leafy vegetables (except Brassica vegetables)
239-2628	Ortho Sevin Liquid Brand Carbaryl Insecticide Formula II	Succulent/fresh beans and peas (subgroup 6B); poultry and poultry premises
264-315	Sevin® Brand 85 Sprayable Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; preplant root dip for sweet potato; preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; ULV application for adult mosquito control; outdoor pet sleeping quarters
264-316	SEVIN® 80 Solupak	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; preplant root dip for sweet potato; preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; ULV application for adult mosquito control; outdoor pet sleeping quarters
264-328	Sevin Brand 80% Dust Base	Agricultural uses
264-333	SEVIN® brand XLR PLUS Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; preplant root dip for sweet potato; preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; ULV application for adult mosquito control; outdoor pet sleeping quarters
264-334	SEVIN® brand RP2 Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); preplant root dip for sweet potato; outdoor pet sleeping quarters; liquid broadcast use for residential lawns
264-335	SEVIN® brand RP4 Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; preplant root dip for sweet potato; preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; ULV application for adult mosquito control; outdoor pet sleeping quarters; liquid broadcast use for residential lawns

TABLE 1.—CARBARYL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENTS—Continued

Registration Number	Product Name	Uses Being Terminated and/or Application Methods Being Eliminated
264-349	SEVIN® brand 4F Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; preplant root dip for sweet potato; preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; ULV application for adult mosquito control; outdoor pet sleeping quarters
264-429	SEVIN® brand Granular Carbaryl Insecticide	Leafy vegetables (except Brassica)
264-526	SEVIN® brand 80 WSP Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; preplant root dip for sweet potato; preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; ULV application for adult mosquito control; outdoor pet sleeping quarters
432-885	SEVIN® Brand Granular Carbaryl Insecticide	Leafy vegetables (except Brassica)
432-982	SEVIN® Brand 97.5% Insecticide	Pea and bean, succulent shelled (subgroup 6B); preplant root dip/ drench treatment for nursery stock, vegetable transplants, bedding plants, and foliage plants
432-1211	AES Carbaryl Insecticide Spray, RTU	Pea and bean, succulent shelled (subgroup 6B)
432-1212	SEVIN® Grub Killer Granules	Leafy vegetables (except Brassica); pea and bean, succulent shelled (subgroup 6B)
432-1213	SEVIN® Granules Ant, Flea, Tick, and Grub Killer	Leafy vegetables (except Brassica); pea and bean, succulent shelled (subgroup 6B)
432-1226	SEVIN 40WSP Carbaryl Insecticide	Preplant root dip/drench for nursery stock, vegetable transplants, bedding plants, and foliage plants; outdoor pet sleeping quarters; liquid broadcast use on residential lawns
432-1227	SEVIN SL Carbaryl Insecticide	Outdoor pet sleeping quarters; liquid broadcast use on residential lawns
432-1237	BES Garden Dust 10%	Pea and bean, succulent shelled (subgroup 6B)
432-1238	AES Carbaryl Insecticide Spray; RTU	Pea and bean, succulent shelled (subgroup 6B)
432-1239	BES Garden Dust 5%	Bean succulent shelled
432-1244	AES SEVIN® Granules Ant, Flea, Tick, and Grub Killer (1% Sevin)	Leafy vegetables (except Brassica)
829-128	SA-50 Brand Sevin 5% Dust	Direct application to domestic pets or dwellings; Succulent/fresh peas and beans (subgroup 6B); all agricultural uses
829-285	Cutworm and Cricket Bait	Succulent/fresh peas and beans (subgroup 6B); leafy vegetables (except Brassica vegetables)
2935-366	Wilbur-Ellis Sevin 5 Bait	Wheat; peas and beans, succulent or fresh (subgroup 6B); leafy vegetables (except Brassica vegetables)
7401-38	Ferti-Lome Liquid Sevin Home Garden Spray	Pea and bean, succulent (fresh) shelled (subgroup 6B)
7401-69	Ferti-Lome Garden Dust	Pea and bean, succulent (fresh) shelled (subgroup 6B); direct applications to domestic pets or pet premises (indoor or outdoor)
7401-166	Hi-Yield 10% Carbaryl Garden Dust	Pea and bean, succulent (fresh) shelled (subgroup 6B); domestic pets or pet premises (indoor or outdoor)
8119-5	Corry's Slug, Snail and Insect Killer	Leafy vegetables (except Brassica)

TABLE 1.—CARBARYL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENTS—Continued

Registration Number	Product Name	Uses Being Terminated and/or Application Methods Being Eliminated
71096-15	Bonide Snail, Slug, and Sowbug Bait	Succulent/fresh peas and beans (subgroup 6B); leafy vegetables (except Brassica)
9198-146	The Andersons 8.0% Granular Carbaryl	Peas and beans, succulent or fresh (subgroup 6B); leafy vegetables (except Brassica)
11656-21	Coastox Carbaryl Cutworm Bait	Peas and beans, succulent or fresh (subgroup 6B); leafy vegetables (except Brassica)
9198-223	The Andersons Insect Killer Granules with 2.0% Carbaryl	Peas and beans, succulent or fresh (subgroup 6B); leafy vegetables (except Brassica)
19713-49	Drexel Carbaryl 4L	Succulent beans and peas; preplant dip for sweet potato; wheat; millet; dip or drench treatment to nursery stock or transplants, etc; indoor uses; ULV mosquito adulticide; all applications using backpack sprayers
19713-50	Drexel Carbaryl 80S	Succulent beans and peas; preplant root dip for sweet potato; wheat; millet; poultry or poultry premises; seedling dip/drench for nursery stock; pet premises; pet sleeping quarters; ULV mosquito adulticide; all applications using backpack sprayers
19713-53	Drexel Carbaryl 10D	All agricultural uses; succulent beans and peas
19713-75	Drexel Carbaryl Technical	Succulent beans and peas; proso millet
19713-89	Carbaryl 2L	Succulent beans and peas; preplant dip for sweet potato; indoor applications; ULV mosquito adulticide; all applications using backpack sprayers
19713-212	Carbaryl 10D	Dust for agricultural use; cotton; succulent beans; poultry; dogs; cats (household pets)
19713-213	Carbaryl 5D	All agricultural uses; succulent beans and peas
19713-244	Carbaryl 80 Dust Base	Succulent peas and beans, (subgroup 6B); wheat; millet; poultry; dogs and pets; all indoor uses (domestic dwellings, residential and commercial, barns); formulation into products for dip or drench treatments
19713-363	Carbaryl 85 Sprayable	Succulent beans and peas; preplant dip for sweet potato; root dip or drench treatments; ULV mosquito adulticide; all applications using backpack sprayers
82200-1	Turf and Garden Seven % Granular Carbaryl Insecticide	Leafy vegetables (except Brassica)

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
239	The Ortho Business Group, c/o The Scotts Company LLC P.O. Box 190 Marysville, Ohio 43040

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA Company Number	Company Name and Address
264	Bayer CropScience PO Box 12014 Research Triangle Park, NC 27709
432	Bayer Environmental Science 2 TW Alexander Drive, PO Box 12014 Research Triangle Park, NC 27709

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA Company Number	Company Name and Address
829	Southern Agricultural Insecticides, Inc. P.O. Box 218 Palmetto, Florida 34220
2935	Wilbur Ellis Company P.O. Box 1286 Fresno, California 93715
7401	Voluntary Purchasing Groups, Inc. P.O. Box 460, 230 FM 87 Bonham, Texas 75418

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA Company Number	Company Name and Address
8119	Matson, LLC c/o Registrations by Design, Inc. 118 1/2 East Main Street, Ste. 1 Salem, Virginia 24153-3805
9198	The Andersons Lawn Fertilizer Division, Inc. P.O. Box 119 Maumee, Ohio 43537
11656	Western Farm Service 2787 W. Bullard Suite 105 Fresno, CA 93711
19713	Drexel Chemical Company 1700 Channel Avenue Post Office Box 13327 Memphis, TN 38113-0327
71096	Or-Cal, Inc. 17220 Westview Road Oswego, Oregon 97034
82200	Viachem, LLC 9701 Fields Road, No. 2400 Gaithersburg, Maryland 20878

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Carbaryl

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before September 19, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products indentified or referenced in Tables 1 and 2 in Unit III. Provided that these stocks bear labels previously approved by EPA, registrants may sell and distribute existing stocks of the affected products for 18 months from the effective date of the Agency's termination order, with the exception of Scotts Ortho Business Group, who may sell and distribute existing stocks of EPA Registration Number 239-2514 in Table 2 of Unit III. for 24 months from the effective date of the Agency's termination order.

If the request for voluntary cancellation and/or use termination is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. EPA intends to publish the cancellation order in the **Federal Register** after the end of the 30–day comment period for this Notice.

List of Subjects

Environmental protection, Pesticides and pests, Carbaryl, SEVIN®.

Dated: August 12, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–19171 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0628; FRL–8379–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 28, 2008 through August 1, 2008, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before September 19, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0628, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0628. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–

2008–0628. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 28, 2008 through August 1, 2008, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number

assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 07/28/08 TO 08/01/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0547	07/21/08	10/18/08	CBI	(G) Additive, open, non-dispersive use	(G) Polyether urethane block copolymer compound with unsaturated fatty acids
P–08–0548	07/21/08	10/18/08	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyurethane
P–08–0549	07/21/08	10/18/08	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polydimethylsiloxane
P–08–0550	07/21/08	10/18/08	Honeywell Specialty Materials	(G) Foam additive	(S) 1-propene, 1,3,3,3-tetrafluoro-, (1*E*)-
P–08–0551	07/21/08	10/18/08	Honeywell Specialty Materials	(S) Chemical intermediate (as CIS-isomer)	(S) 1-propene, 1,3,3,3-tetrafluoro-, (1*Z*)-
P–08–0552	07/21/08	10/18/08	CBI	(G) Industrial wood coating	(G) Multifunctional acrylate
P–08–0553	07/21/08	10/18/08	CBI	(G) industrial wood applications	(G) Polycarbonate polyurethane acrylate oligomer
P–08–0554	07/22/08	10/19/08	CBI	(G) Aqueous polyurethane rubber coating resin for open, non-dispersive use	(G) Aqueous polyurethane dispersion
P–08–0555	07/24/08	10/21/08	CBI	(G) Polymer used in electronics manufacture	(G) Polymer of aromatic dianhydride, aromatic diamine and polysiloxanediamine.
P–08–0556	07/28/08	10/25/08	CBI	(G) Open non-dispersive	(G) Aromatic prepolymer based on TDI
P–08–0557	07/25/08	10/22/08	Cytec Industries Inc.	(G) Coatings resin	(G) Acrylated aliphatic polyurethane
P–08–0558	07/28/08	10/25/08	CBI	(S) Polyurethane acrylate used in the manufacture of ultra violet curable coatings	(G) Polyurethane acrylate
P–08–0559	07/28/08	10/25/08	CBI	(G) Chemical intermediate	(G) Aliphatic ketoxime
P–08–0560	07/29/08	10/26/08	DIC International, LLC.	(G) Additive for lubricants	(G) Modified polyalkyldiene polymer
P–08–0561	07/29/08	10/26/08	CBI	(S) Ingredient in fragrance compound	(G) Cycloaklyl piperonyl ether
P–08–0562	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Tall oil, maleated, oxidized, sodium salts
P–08–0563	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Tall oil, maleated, oxidized, potassium salts
P–08–0564	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Tall oil, maleated, oxidized, calcium salts
P–08–0565	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Tall oil, maleated, oxidized, ammonium salts
P–08–0566	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Fatty acids, tall oil, maleated, oxidized, sodium salts
P–08–0567	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Fatty acids, tall oil, maleated, oxidized, potassium salts
P–08–0568	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Fatty acids, tall oil, maleated, oxidized, calcium salts
P–08–0569	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Fatty acids, tall oil, maleated, oxidized, ammonium salts
P–08–0570	07/29/08	10/26/08	CBI	(G) Mining aid	(S) Fatty acids, tall oil, polymd., oxidized, sodium salts
P–08–0571	07/31/08	10/28/08	CBI	(G) Ink binder	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate
P–08–0572	07/31/08	10/28/08	CBI	(G) Ink binder	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate, ammonium salt
P–08–0573	07/31/08	10/28/08	CBI	(G) Ink binder	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate, sodium salt
P–08–0574	07/31/08	10/28/08	CBI	(G) Ink binder	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate, potassium salt
P–08–0575	07/31/08	10/28/08	CBI	(G) Ink binder	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate, compound with amino alcohol
P–08–0576	07/31/08	10/28/08	CBI	(G) Ink binder	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate, compound with amino alcohol

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 07/28/08 TO 08/01/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0577	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate and epoxy diacrylate with .beta.-diketone.
P–08–0578	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate and epoxy diacrylate with .beta.-diketone.
P–08–0579	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate and epoxy diacrylate with .beta.-diketone.
P–08–0580	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate and epoxy diacrylate with .beta.-diketone.
P–08–0581	07/31/08	10/28/08	CBI	(G) Adhesive, coating,ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate and epoxy diacrylate with .beta.-diketone.
P–08–0582	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate and epoxy diacrylate with .beta.-diketone.
P–08–0583	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of triacrylate, diacrylate, .beta.-ketoester and dialkylmine.
P–08–0584	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of triacrylate, diacrylate, .beta.-ketoester and dialkylmine.
P–08–0585	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of triacrylate, diacrylate, .beta.-ketoester and dialkylmine.
P–08–0586	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of triacrylate, diacrylate, .beta.-ketoester and dialkylmine.
P–08–0587	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of triacrylate, diacrylate, .beta.-ketoester and dialkylmine.
P–08–0588	07/31/08	10/28/08	CBI	(G) Adhesive, coating, ink	(G) Polyacrylate oligomer product from base-catalyzed reaction of triacrylate, diacrylate, .beta.-ketoester and dialkylmine.
P–08–0589	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester
P–08–0590	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester
P–08–0591	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester
P–08–0592	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester
P–08–0593	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester

I. 65 PREMANUFACTURE NOTICES RECEIVED FROM: 07/28/08 TO 08/01/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0594	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester
P–08–0595	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-diketone.
P–08–0596	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-diketone.
P–08–0597	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-diketone.
P–08–0598	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-diketone.
P–08–0599	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-diketone.
P–08–0600	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-diketone.
P–08–0601	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester.
P–08–0602	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester.
P–08–0603	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester.
P–08–0604	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester.
P–08–0605	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester.
P–08–0606	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from base-catalyzed reaction of tetraacrylate, triacrylate, epoxy diacrylate and .beta.-ketoester.
P–08–0607	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Aliphatic urethane diacrylate monomer from diisocyanate and monoepoxide acrylate ester.
P–08–0608	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Aliphatic urethane diacrylate monomer from diisocyanate and monoepoxide acrylate ester
P–08–0609	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Aliphatic urethane diacrylate monomer from diisocyanate and monoepoxide acrylate ester
P–08–0610	08/01/08	10/29/08	CBI	(G) Ink, coating, adhesive	(G) Aliphatic urethane diacrylate monomer from diisocyanate and monoepoxide acrylate ester
P–08–0611	08/01/08	10/29/08	CBI	(G) Rubber additive	(G) Isocyanate polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 07/28/08 TO 08/01/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–08–0017	07/25/08	09/07/08	Cytec Industries Inc.	(G) Coatings resin	(G) Acrylated aliphatic polyurethane

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 18 NOTICES OF COMMENCEMENT FROM: 07/28/08 TO 08/1/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P–06–0423	07/31/08	07/18/08	(G) 2-Propenoic acid, 2-methyl-, 1,2-ethanediyl ester, telomer with alkyl 2-[[(alkylthio)thioxomethyl]thio]-2-methylalkanoate, alkyl methacrylate and me methacrylate, tert-bu 2-ethylhexaneperoxoate-initiated
P–07–0639	07/30/08	07/18/08	(G) Ether carboxylic acid amide
P–07–0662	07/18/08	06/30/08	(G) Substituted alkenyl-terminated siloxanes and silicones polymers with substituted acrylates, peroxide initiated
P–08–0105	07/22/08	06/29/08	(G) Azo compound
P–08–0114	07/29/08	06/25/08	(G) Alkanoic acid, ethenyl ester, polymer with ethenyl acetate and alkyl 2-propenoate
P–08–0121	08/01/08	07/10/08	(G) Acryloylisocyanate
P–08–0124	07/30/08	07/18/08	(G) Quaternary ammonium compound
P–08–0209	07/28/08	07/23/08	(G) Poly(oxy-1,2-ethanediyl), .alpha.-bis alkyl substituted hydroxyphenyl ester-.omega.-bis alkyl substituted hydroxyphenyl ester
P–08–0265	08/01/08	07/08/08	(G) Polymer of isocyanic acid, polymethylene polyphenylene ester, with alkyl polyamine, .alpha.-hydro-.gamma.-hydroxypoly[(oxy(methyl-1,2-ethanediyl)) and methyloxirane
P–08–0275	07/18/08	07/07/08	(S) Cesium tungsten oxide
P–08–0310	07/24/08	07/19/08	(G) Heteromonocycle carboxylic acid, (3-chloro-2-pyridinyl)-oxo-, ethyl ester
P–08–0327	07/23/08	07/14/08	(G) Halogenated aromatic ester derivatives
P–08–0333	07/25/08	06/28/08	(G) Fatty acids, C_{18}-unsaturated, dimers, polymer with alkyldioic acids, ethylenediamine, dialkylcyclicdiamine, and tall-oil fatty acid
P–08–0335	07/25/08	06/28/08	(G) Fatty acids, C_{18}-unsaturated, dimers, polymer with alkyldioic acid, ethylenediamine, dialkyloxydiamine, and tall-oil fatty acid
P–08–0344	07/18/08	07/10/08	(S) 1,3-dioxepin, 4,7-dihydro-2-(1,1,4-trimethyl-3-pentenyl yl)-
P–08–0352	07/28/08	07/17/08	(G) Alkyl acrylate polymer with inorganic acid and alkoxyethyl acrylate, alkyl ester
P–08–0384	07/31/08	07/21/08	(G) Vegetable oils, esters with polyols
P–95–0231	07/28/08	02/23/00	(G) Polyester resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: Augut 13, 2008.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–19304 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0615; FRL–8378–7]

Petitions to Revoke All Tolerances Established for Endosulfan; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice asks the public to comment on requests from the Natural Resources Defense Council (NRDC) and Pesticide Action Network North America (PANNA) that EPA revoke all tolerances for the organochlorine pesticide endosulfan. In addition, this notice solicits information on endosulfan residues in or on commodities consumed by Alaska Natives.

DATES: Comments must be received on or before October 20, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0615, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries

are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0615. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Tracy L. Perry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0128; fax number: (703) 308–8005; e-mail address: *perry.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including: environmental, human health, and agricultural advocates; the chemical industry, pesticide users, and members of the public interested in the sale, distribution, or the use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA seeks public comment on petitions from the National Resources Defense Council (NRDC) and Pesticide Action Network North America (PANNA) requesting that EPA revoke all tolerances for endosulfan. These petitions, available in EPA–HQ–OPP–2008–0615, were submitted on February 19, 2008 in response to EPA's 2007 human health and ecological effects assessment updates for endosulfan (**Federal Register** of November 16, 2007; 72 FR 64624; FRL–8339–5). The updated assessments, as well as the 2002 endosulfan registration eligibility decision, are available in the electronic docket at *http://www.regulations.gov* under docket number EPA–HQ–OPP–2007–0944.

Although the petitions requested both cancellation and revocation of tolerances, this notice is seeking public comment only on the requests to revoke all tolerances for residues of endosulfan established under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) and codified at 40 CFR 180.182.

EPA will issue a separate **Federal Register** notice in early 2009 soliciting public comment on the NRDC and PANNA petitions' requests to cancel all uses of endosulfan under section 6 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136d(b)). The notice will be issued in conjunction with a request for public comment on findings from an October 2008 Scientific Advisory Panel (SAP) meeting on Persistent Bioaccumulative Toxicants (PBTs).

Through this current notice, EPA is also soliciting information from the public on endosulfan residues in/on commodities consumed by Alaska

Natives, as well as additional information on endosulfan bioaccumulation, persistence, toxicity, monitoring and transport, and ecological incidents. This information will support EPA compliance with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

To-date, EPA has received and reviewed the following studies to better assess dietary risk to Alaska Natives from endosulfan residues:

1. Alaska Department of Environmental Conservation Fish Monitoring Program: Analysis of Organic Contaminants;

2. EPA Region 10 Columbia River Basin Fish Contaminant Survey 1996-1998;

3. EPA Region 10 Survey of Chemical Contaminants in Fish, Invertebrates, and Plants Collected in the Vicinity of Tyonek, Seldovia, Port Graham and Nanwalek and Cook Inlet, Alaska;

4. National Park Service Western Airborne Contaminants Assessment Project (WACAP) data; and

5. Kelly, *et al*. ''Food Web-Specific Biomagnification of Persistent Organic Pollutants,'' published July 13, 2007 in *Science* , vol. 317, no. 5835, pp. 236 – 239.

The studies listed in this unit are available in docket ID number EPA–HQ–OPP–2008–0615.

EPA asks that comments on the NRDC and PANNA petitions' requests to revoke all tolerances for residues of endosulfan be submitted within 60 days. Submission of information on endosulfan residues in/on commodities consumed by Alaska Natives should also be submitted within 60 days.

B. What is the Agency's Authority for Taking this Action?

FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3)

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 12, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–19166 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0536; FRL–8377–5]

Metam Sodium, Metam Potassium and Chloropicrin; Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective February 17, 2009, unless the Agency receives a written withdrawal request on or before February 17, 2009. The Agency will consider a withdrawal request postmarked no later than February 17, 2009.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before February 17, 2009.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) and chemical name for the pesticide of interest, as shown in the table below, by one of the following methods:

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For metam sodium, metam potassium and MITC, (EPA–HQ–OPP–2005–0125) contact Heather Garvie, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; e-mail address: *garvie.heather@epa.gov*.

For chloropicrin, (EPA–HQ–OPP–2007–0350) contact Andrea Carone, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0122; e-mail address: *carone.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2005-0125 for metam sodium, metam potassium and MITC; and EPA–HQ–OPP–2007–0350 for chloropicrin. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
1448-361	Busan 1236	Metam sodium	Organic sludge fumigation
1448-371	Busan 1020L	Metam sodium	Leather and hide processing
1448-93	Busan 1016	Metam sodium	Cane and beet sugar mills
1448-52	Busan 40	Metam potassium	Water-based drilling, completion and packer fluids; leather and hide processing (this use deletion is not inclusive of the tanning drum leather use); preservation of protective colloids, emulsion resins and water-thinned paints; cutting fluids (metal-working fluids)
1448-47	Busan 52	Metam potassium	Water-based drilling, completion and packer fluids; leather and hide processing (this use deletion is not inclusive of the tanning drum leather use); preservation of protective colloids, emulsion resins and water-thinned paints; cutting fluids (metalworking fluids)
1448-74	PNMDC	Metam potassium	Leather and hide processing (this use deletion is not inclusive of the tanning drum leather use); preservation of protective colloids, emulsion resins and water-thinned paints; cutting fluids (metalworking fluids); cane and beet sugar mills; petroleum secondary recovery operations; once-through cooling water applications
1448-53	Busan 881	Metam Potassium	Cane and beet sugar mills; petroleum secondary recovery operations; once-through cooling water applications
1448-382	NABE-M	Metam potassium	Cane and beet sugar mills; petroleum secondary recovery operations; once-through cooling water applications
8536-2	Chloropicrin 100 Fumigant	Chloropicrin	Treatment of wood, timbers, poles, piles, and glue-laminated beams; fumigation of enclosed spaces
58266-2	Tri-Clor Fumigant	Chloropicrin	Treatment of wood, timbers, poles, piles, and glue-laminated beams; fumigation of enclosed spaces
66330-47	NUTRAPIC	Chloropicrin	Fumigation of enclosed spaces
5785-17	Chloro-O-Pic	Chloropicrin	Fumigation of enclosed spaces

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 17, 2009 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
1448	Buckman Laboratories 1256 North McLean Blvd. Memphis, TN 38108-1241 Tel: 901-278-0330
8536	Soil Chemicals Corporation 8770 Highway 25 P.O. Box 782 Hollister, CA 95024-0782 Tel: 831-637-1992
58266	Shadow Mountain Products Corporation 8770 Highway 25 P.O. Box 1327 Hollister, CA 95024-1327 Tel: 831-637-0195
66330	Arysta Lifescience North America Corporation 15401 Weston Parkway, Suite 150 Cary, North Carolina 27513 Tel: 919-678-2194
5785	Great Lakes Chemical a Chemtura Co. P.O. Box 2200 West Lafayette, Indiana 47996-2200 Tel: 765-497-6391

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Heather Garvie (for metam sodium, metam potassium and MITC) or Andrea Carone (for chloropicrin) using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than February 17, 2009.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 13, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E8–19305 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2008–0611, FRL–8707–1]

Seven Out Tank Superfund Site; Waycross, Ware County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Seven Out Tank Superfund Site located in Waycross, Ware County, Georgia for publication.

DATES: The Agency will consider public comments on the settlement until September 19, 2008. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2008–0611 or Site name Seven Out Tank Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Painter.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Painter.

Mail: Ms. Paula V. Painter, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.'' *Instructions:* Direct your comments to Docket ID No. EPA–R04–SFUND–2008–0611. 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* 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 *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Painter within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: August 1, 2008.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E8–19331 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0973; FRL–8375–6]

Siduron Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide siduron, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the siduron Docket. Siduron is a selective, systemic preemergence herbicide used to control annual grassy weeds in stands of cool season grasses, such as on lawns, on golf courses, and on sod farms. EPA has reviewed siduron through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 19, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0973, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0973. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Dana L. Friedman, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8827; fax number: (703) 305–5290; e-mail address: *friedman.dana@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not

contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, siduron under section 4(g)(2)(A) of FIFRA. Siduron is a selective, systemic preemergence herbicide used to control annual grassy weeds in stands of cool season grasses, such as on lawns, on golf courses, and on sod farms. It may be applied in spring to newly planted grass or grass planted in the previous fall, or to established turf. Siduron was first registered in the early 1960s and has never been registered for any food uses. EPA has determined that the data base to support reregistration is substantially complete and that products containing siduron are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing siduron.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, siduron was reviewed through the modified 4–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for siduron.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the siduron RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for siduron. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the siduron RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 30, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–18990 Filed 8–19–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Commission Meeting; Friday, August 22, 2008

August 18, 2008.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, August 22, 2008, which is scheduled to commence at 10 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Tele-Communications	*Title:* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers (WT Docket No. 05–265). *Summary:* The Commission will consider a Memorandum Opinion and Order on Reconsideration addressing petitions for reconsideration of the Report and Order.
2	Wireline Competition	*Title:* Implementation of the NET 911 Improvement Act. *Summary:* The Commission will consider a Notice of Proposed Rulemaking regarding implementation of the New and Emerging Technologies 911 Improvement Act of 2008.
3	Media	*Title:* Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules.

Item No.	Bureau	Subject
		Summary: The Commission will consider a Fourth Report and Order concerning issues related to mandatory cable carriage of digital broadcast television signals after the conclusion of the digital television ("DTV") transportation.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc., (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc., may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19401 Filed 8–18–08; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2871]

Petition for Reconsideration of Action in Rulemaking Proceeding

August 12, 2008.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by September 4, 2008. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of High-Cost Universal Service Support (WC Docket No. 05–337) Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19180 Filed 8–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it is submitting to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection systems described below.

DATES: Comments must be submitted on or before September 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.*
- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, PA1730–3000, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* Acquisition Services Information Requirements.

OMB Number: 3064–0072. This OMB Number covers the following forms:

Forms Currently in Use:

FDIC Background Investigation Questionnaire for Contractor Personnel Management Officials, Form 1600/04 (10–05).

FDIC Contractor Representation and Certifications, Form 3700/04A (10–05).

FDIC Background Investigation Questionnaire for Contractor, Form 1600/07 (10–05).

FDIC Integrity and Fitness Representations and Certifications, Form 3700/12 (10–05).

FDIC Leasing Representations and Certifications Form 3700/44 (10–05).

Discontinued Forms in This Collection:

FDIC Notice and Authorization Pertaining to Consumer Reports, Form 1600/10 (10–02) [form removed as a result of determination that it qualifies as a

''certification'' or ''consent'' excluded from the definition of ''information'']. *Frequency of Response:* On occasion.

Affected Public: Any contractors who wish to do business, have done business, or are currently under contract with the FDIC.

Estimated Number of Respondents and Burden Hours:

FDIC document	Hours per unit	Number of respondents	Burden hours
Background Investigation Questionnaire Management (1600/04)	.33	4,000	1,320
Background Investigation Questionnaire Contractors (1600/07)	.50	200	100
Contractor Representation and Certifications (3700/04A)	.50	360	180
Integrity and Fitness Representations and Certifications (3700/12)	.33	360	119
Leasing Representations and Certifications (3700/44)	1.0	35	35
FDIC Past Performance Questionnaire	.75	1,080	810
Total		6,035	2,564

General Description of Collection: The collection involves the submission of information on various forms by contractors who wish to do business, have done business, or are currently under contract with the FDIC. The information is used to ensure compliance with established contractor ethics regulations (12 CFR Part 366); obtain information on a contractor's past performance for proposal evaluation purposes; review a potential lessor's fitness and integrity prior to entering into a lease transaction; and perform background investigations on contractors and contractor personnel.

2. *Title:* Account Based Disclosures in Connection With Federal Reserve Regulations E, CC, and DD.

OMB Number: 3064–0084.

Frequency of Response: On occasion.

Affected Public: State chartered banks that are not members of the Federal Reserve System.

Estimated Number of Respondents: 5,192.

Annual Burden: Regulation E—29,404 hours; Regulation CC—528,513 hours; and Regulation DD—302,434 hours.

One-time Burden: Regulation E—ATM and transaction disclosures—42,336 hours.

Total Estimated Burden: 902,687 hours.

General Description of Collection: This FDIC information collection provides for the application of Regulations E (Electronic Fund Transfers), CC (Availability of Funds), and DD (Truth in Savings) to State nonmember banks. Regulations E, CC, and DD are issued by the Federal Reserve Board of Governors (FRB) to ensure, among other things, that consumers are provided adequate disclosures regarding accounts, including electronic fund transfer services, availability of funds, and fees and annual percentage yield for deposit accounts. Generally, the Regulation E disclosures are designed to ensure consumers receive adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to them so that they can make informed decisions. Institutions offering EFT services must disclose to consumers certain information, including: Initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures.

Like Regulation E, Regulation CC has consumer protection disclosure requirements. Specifically, Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. Depository institutions must also provide an awareness disclosure regarding substitute checks. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check.

Regulation DD also has similar consumer protection disclosure requirements that are intended to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield, and other account terms. Regulation DD requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield (APY) earned during those statement periods. It also contains rules about advertising deposit accounts.

Although the FRB regulations require institutions to retain evidence of compliance with the disclosure requirements, the regulations do not specify the types of records that must be retained.

3. *Title:* Prompt Corrective Action.

OMB Number: 3064–0115.

Frequency of Response: On occasion.

Affected Public: All insured depository institutions.

Estimated Number of Respondents: 19.

Estimated Time per Response: 4 hours.

Total Annual Burden: 76 hours.

General Description of Collection: The Prompt Corrective Action provisions in Section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) permits and, in some cases requires, the Federal Deposit Insurance Corporation (FDIC) and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within one of five capital categories. They also restrict or prohibit certain activities and require the submission of a capital restoration plan when an insured institution becomes undercapitalized.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 15th day of August, 2008.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. E8–19254 Filed 8–19–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE & TIME: Thursday, August 21, 2008, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

ADVISORY OPINION 2008–04: Chris Dodd for President, Inc. by Marc E. Elias, Esquire, and Brian G. Svoboda, Esquire.

ADVISORY OPINION 2008–06: Democratic Party of Virginia by Marc E. Elias, Esquire, and Caroline P. Goodson, Esquire.

ADVISORY OPINION 2008–07: Senator David Vitter and Vitter for U.S. Senate by Jan Witold Baran, Esquire, and Caleb P. Burns, Esquire.

ADVISORY OPINION 2008–09: Senator Frank Lautenberg and Lautenberg for Senate by Marc Elias, Esquire.

John McCain 2008, Inc.—Presidential Primary Matching Payment Program (LRA 731).

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Press Officer, *Telephone:* (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8–19126 Filed 8–19–08; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201146–001.

Title: Agreement for the Termination of the Restated Lease and Operating Agreement between Broward County, Universal Maritime Service Corp., and Maersk, Inc.

Parties: Broward County (Florida); Maersk, Inc.; and Universal Maritime Service Corp.

Filing Party: Candace J. Running; Office of the County Attorney; Broward County; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the terms and conditions for terminating the parties' underlying lease.

By order of the Federal Maritime Commission.

Dated: August 15, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–19333 Filed 8–19–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant

Aimpacific Service, Inc., 3380 Flair Drive, #236, El Monte, CA 91731, *Officer:* Shan Kung, Chief Operation Manager (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Golden Egg Warehouse Logistic, 5401 San Leandro Street, Oakland, CA 94601, Chau Thai, Sole Proprietor,

Tri Star Freight System, Inc., 5407 Mesa Drive, Houston, TX 77028, *Officer:* Kathleen G. Nance, CEO (Qualifying Individual),

Apex Maritime Col, Inc. dba Apex Shipping Company, 208 Utah Avenue, So. San Francisco, CA 94080, *Officers:* Vicky Cheung, President, (Qualifying Individual) Lena Cheung, Secretary,

LT Freight International, Inc., 4751 Blanco Drive, San Jose, CA 95129, *Officers:* Tony Tian, Vice President (Qualifying Individual), Lisa Tian, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Baycor International, LLC, 110 Standifer Street, Humble, TX 77338, *Officers:* Jorge A. Aponte, President (Qualifying Individual), Mariela Guzman, Director.

Dated: August 15, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–19328 Filed 8–19–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 017378N.
Name: M.W. Freight Forwarding Corp.
Address: 0300 Northwest 19th Street, Ste. 104, Miami, FL 33172.
Date Revoked: July 31, 2008.
Reason: Failed to maintain a valid bond.

License Number: 017767N.
Name: Empire Express, Inc.
Address: 147–39 175th Street, Jamaica, NY 11434.
Date Revoked: July 27, 2008.
Reason: Failed to maintain a valid bond.

License Number: 020499F.
Name: KOC Enterprise Inc.
Address: 111 Lakeview Drive, Old Tappan, NJ 07675.
Date Revoked: July 31, 2008.
Reason: Failed to maintain a valid bond.

License Number: 020747N.
Name: Prime Logistics Int'l, Inc.
Address: 6900 NW 84th Avenue, Miami, FL 33166.
Date Revoked: July 18, 2008.
Reason: Failed to maintain a valid bond.

License Number: 019586NF.
Name: USL Logistics, LLC.
Address: 3621 S. Harbor Blvd., Suite 225, Santa Ana, CA 92704.
Date Revoked: July 18, 2008.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E8–19329 Filed 8–19–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Notifications Related to Community Development and Public Welfare Investments of State Member Banks.
Agency form number: FR H–6.
OMB control number: 7100–0278.
Frequency: Event-generated.
Reporters: State member banks.
Annual reporting hours: 86.
Estimated average hours per response: Investment notice, 2 hours; application (prior approval) 5 hours; and extension of divestiture period, 5 hours.
Number of respondents: Investment notice, 38; application (prior approval), 1; and extension of divestiture period, 1.
General description of report: This information collection is required to obtain a benefit (12 U.S.C. 338a and 12 CFR 208.22). Individual respondent data generally are not regarded as confidential but information that is proprietary or concerns examination ratings would be considered confidential.
Abstract: Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) If the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.
Current Actions: On June 3, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 31684) requesting public comment for 60 days on the extension, without revision, of the FR H–6 information collection. The comment period for this notice expired on August 4, 2008. The Federal Reserve did not receive any comments.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. *Report title:* Application for Membership in the Federal Reserve System.
Agency form number: FR 2083, 2083A, 2083B, and 2083C.
OMB control number: 7100–0046.
Frequency: On occasion.
Reporters: Newly organized banks that seek to become state member banks, or existing banks or savings institutions that seek to convert to state member bank status.
Annual reporting hours: 260 hours.
Estimated average hours per response: 4 hours.
Number of respondents: 65.
General description of report: This information collection is authorized by Section 9 of the Federal Reserve Act (12 U.S.C. 321, 322, and 333) and is required to obtain or retain a benefit. Most individual respondent data are not considered confidential. Applicants may, however, request that parts of their membership applications be kept confidential, but in such cases the Applicant must justify its request by demonstrating how an exemption under the Freedom of Information Act (FOIA) is satisfied. The confidentiality status of the information submitted will be judged on a case-by-case basis.
Abstract: The application for membership is a required one-time submission that collects the information necessary for the Federal Reserve to evaluate the statutory criteria for admission of a new or existing state bank into membership in the Federal Reserve System. The application collects managerial, financial, and structural data.
Current actions: On June 3, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 31684) requesting public comment for 60 days on the extension, with revision, of the applications. The comment period for this notice expired on August 4, 2008. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

2. *Report title:* Applications for Subscription to, Adjustment in the Holding of, and Cancellation of Federal Reserve Bank Stock.
Agency form number: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087.
OMB control number: 7100–0042.
Frequency: On occasion.
Reporters: National, state member, and nonmember banks.
Annual reporting hours: FR 2030, 15 hours; FR 2030a, 26 hours; FR 2056, 864 hours; FR 2086, 1 hour; FR 2086a, 18 hours; and FR 2087, 2 hours.
Estimated average hours per response: 0.5 hours.
Number of respondents: FR 2030, 30; FR 2030a, 52; FR 2056, 1,728; FR 2086, 2; FR 2086a, 36; and FR 2087, 4.
General description of report: These information collections are mandatory.

- FR 2030 and FR 2030a: (12 U.S.C. §§ 222, 282, 248(a), and 321);

• FR 2056: (12 U.S.C. 287, 248(a) and (i));

• FR 2086: (12 U.S.C. 287, 248(a) and (i));

• FR 2086a: (12 U.S.C. 321, 287, and 248(a)); and

• FR 2087: (12 U.S.C. 288 and 248 (a) and (i)).

Most individual respondent data are not considered confidential. Applicants may, however, request that parts of their membership applications be kept confidential, but in such cases the Applicant must justify its request by demonstrating how an exemption under the FOIA is satisfied. The confidentiality status of the information submitted will be judged on a case-by-case basis.

Abstract: These application forms are required by the Federal Reserve Act and Regulation I. These forms must be used by a new or existing member bank (including a national bank) to request the issuance, and adjustment in, or cancellation of Federal Reserve Bank stock. The forms must contain certain certifications by the applicants, as well as certain other financial and shareholder data that is needed by the Federal Reserve to process the request.

Current actions: On June 3, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 31684) requesting public comment for 60 days on the extension, with revision, of the applications. The comment period for this notice expired on August 4, 2008. The Federal Reserve did not receive any comments.

The Federal Reserve proposed to add additional signature lines the FR 2030, 2030a, 2056, and 2086a that were intended to facilitate the processing of each application form by the appropriate Reserve Bank. However, after further review the Federal Reserve decided to remove from consideration the proposed additional signature lines because it could create greater confusion for the banks while adding little benefit to the Federal Reserve.

3. *Report title:* Report of Changes in Organizational Structure, Supplement to the Report of Changes in Organizational Structure, Annual Report of Bank Holding Companies, Annual Report of Foreign Banking Organizations.

Agency form numbers: FR Y–10, FR Y–10E, FR Y–6, and FR Y–7.

OMB control number: 7100–0297.

Frequency: Event-generated, annual.

Reporters: Bank holding companies (BHCs), foreign banking organizations (FBOs), member banks, Edge and agreement corporations.

Annual reporting hours: FR Y–10, 26,712 hours; FR Y–10E, 1,384 hours; FR Y–6, 27,069 hours; and FR Y–7, 900 hours.

Estimated average hours per response: FR Y–10, 1.00 to 1.25 hours; FR Y–10E, 0.50 hours; FR Y–6, 5.25 hours; and FR Y–7, 3.50 hours.

Number of respondents: FR Y–10, 5,952; FR Y–10E, 2,768; FR Y–6, 5,156; and FR Y–7, 257.

General description of report: These information collections are mandatory under the Federal Reserve Act, the BHC Act, and the International Banking Act (12 U.S.C. 248 (a)(1), 321, 601, 602, 611a, 615, 625, 1843(k), 1844(c)(1)(A), 3106(a), and 3108(a)), and Regulations K and Y (12 CFR 211.13(c), 225.5(b), and 225.87). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the FOIA, 5 U.S.C. 552(b).

Abstract: The FR Y–10 is an event-generated information collection submitted by FBOs; top-tier BHCs; state member banks unaffiliated with a BHC; Edge and agreement corporations that are not controlled by a member bank, a domestic BHC, or a FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only), to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities. The FR Y–10E is a free-form supplement that may be used to collect additional structural information deemed to be critical and needed in an expedited manner.

The FR Y–6 is an annual information collection submitted by top-tier BHCs and nonqualifying FBOs. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y (12 CFR 225).

The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Federal Reserve. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

Current Actions: On June 3, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 31684) requesting public comment for 60 days on the extension, with revision, of these information collections. The comment period for this notice expired on August 4, 2008. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 14, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–19188 Filed 8–19–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's

functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before October 20, 2008.

ADDRESSES: You may submit comments, identified by *Reg H–2 or Reg BB,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H.

Agency form number: Reg H–2.

OMB control number: 7100–0280.

Frequency: Event-generated.

Reporters: State member banks.

Annual reporting hours: 43,298 hours.

Estimated average time per response: Notice of special flood hazards to borrowers and servicers, 5 minutes; notice to the Federal Emergency Management Agency (FEMA) of servicer, 5 minutes; notice to FEMA of change of servicer, 5 minutes; and retention of standard FEMA form, 2.5 minutes.

Number of respondents: 874.

General description of report: This information collection is mandatory pursuant to Section 12 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a) and section 1364 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104a). Because the Federal Reserve does not collect any information, no issue of confidentiality would normally arise. However, should the records required by the Reg H requirements come into possession of the Board during an examination of a state member bank, those records would be protected from disclosure by exemption 8 of the Freedom of Information Act (FOIA). (5 U.S.C. 552(b)(8)). Additionally, depending on the content of the records, the information could also potentially be protected from disclosure by FOIA exemptions 4 and 6. (5 U.S.C. 552(b)(4) & (6)).

Abstract: Regulation H requires state member banks to notify a borrower and servicer when loans secured by real estate are determined to be in a special flood hazard area and notify them whether flood insurance is available; notify FEMA of the identity of, and any change of, the servicer of a loan secured by real estate in a special flood hazard area; and retain a completed copy of the Standard Flood Hazard Determination Form used to determine whether property securing a loan is in a special flood hazard area.

2. *Report title:* Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).

Agency form number: Reg BB.

OMB control number: 7100–0197.

Frequency: Annually.

Reporters: State member banks.

Annual reporting hours: 61,545 hours.

Estimated average hours per response: Recordkeeping Requirement, small business and small farm loan register, 219 hours. Optional Recordkeeping Requirements, consumer loan data, 326 hours; and other loan data, 25 hours. Reporting Requirements, assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; and HMDA out of MSA loan data, 253 hours. Optional Reporting Requirements, data on lending by a consortium or third party, 17 hours; affiliate lending data, 38 hours; strategic plan, 275 hours; and request for designation as a wholesale or limited purpose bank, 4 hours. Disclosure Requirement, public file, 10 hours.

Number of respondents: 874.

General description of report: This information collection is authorized pursuant to Section 806 of the Community Reinvestment Act (CRA) which permits the Board to issue regulations to carry out the purpose of CRA (12 U.S.C. 2905), Section 11 of the Federal Reserve Act (FRA) which permits the Board to require such statements as reports of state member banks as it deems necessary (12 U.S.C. 248(a)(1)), and section 9 of the FRA which permits the Board to examine state member banks (12 U.S.C. 325); the requirements are mandatory, depending on bank size and other factors. Generally, the data that are reported to the Federal Reserve are not considered confidential.

Abstract: This submission covers an extension of the Federal Reserve's currently approved information collections in their CRA regulations (12 CFR part 228). The submission involves no change to the regulation or to the information collection. The Federal Reserve System needs the information collected to fulfill their obligations under the CRA (12 U.S.C. 2901 *et seq.*) to evaluate and assign ratings to the performance of institutions, in connection with helping to meet the

credit needs of their communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The Federal Reserve System uses the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities. Financial institutions maintain and provide the information to the Federal Reserve System.

Board of Governors of the Federal Reserve System, August 14, 2008.

Robert deV. Frieson,

Deputy Secretary of the Board.

[FR Doc. E8–19189 Filed 8–19–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 071 0193]

Sun Pharmaceutical Industries Ltd.; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 11, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Sun Pharmaceutical, File No. 071 0193,'' 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/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] Comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information. The FTC 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 Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-SunPharmaceutical*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

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, whether filed in paper or electronic form, 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 policy, at (*http://www.ftc.gov/ftc/privacy.htm*).

FOR FURTHER INFORMATION CONTACT: David L. Inglefield, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2637.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 13, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/08/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Sun Pharmaceutical Industries Ltd. (''Sun'') which is designed to remedy the anticompetitive effects of the acquisition of Taro Pharmaceutical Industries Ltd. (''Taro'') by Sun. Under the terms of the proposed Consent Agreement, Sun is required to divest all of Sun's rights and assets necessary to manufacture and market: (1) generic immediate-release carbamazepine tablets; (2) generic chewable carbamazepine tablets; and (3) generic extended-release carbamazepine tablets to Torrent Pharmaceuticals Ltd. (''Torrent'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an Agreement of Merger executed on May 18, 2007, Sun proposed to acquire all of the issued and outstanding shares of Taro in a transaction then valued at approximately $454 million. In the event that agreement has been properly terminated, as Taro claims, Sun intends to acquire controlling interest in Taro via an Option Agreement executed at the time of the merger agreement and/ or via a tender offer. The Commission's Complaint alleges that the proposed

[1] 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).

acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the manufacture and sale of generic immediate-release carbamazepine tablets and chewable carbamazepine tablets, and in the research, development, manufacture and sale of extended-release carbamazepine tablets (collectively, the ''Products''). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

Sun, headquartered in Mumbai, India, is a leading developer, manufacturer, marketer, and distributor of niche pharmaceuticals in its home country and active pharmaceutical ingredients (APIs'') and generic drugs worldwide. Sun is intent on growing its U.S. generic drugs business and sells generic pharmaceuticals in the United States through wholly-owned Caraco Pharmaceutical Laboratories Ltd. Taro, headquartered in Israel, also develops and manufactures generic pharmaceutical products, primarily for sale in the United States.

The Products and Structure of the Markets

The proposed acquisition of Taro by Sun would increase Sun's worldwide position in generic pharmaceuticals and augment Sun's pipeline of future generic products. Sun and Taro overlap in a number of generic pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in the markets for three different forms of carbamazepine. Carbamazepine is an anticonvulsant that is used primarily as an anti-epileptic drug. It is taken daily, either alone or in combination with other drugs, to prevent and control seizures.

The transaction would reduce the number of competing generic suppliers in the overlap markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are at least two generic equivalents for each of the products at issue, the branded versions no longer significantly constrain the price of the generic drugs.

Generic immediate-release carbamazepine tablets are AB-rated generic versions of Novartis's Tegratol®. In this market, Taro is the leading supplier with half the market. Teva Pharmaceutical Industries Ltd. (''Teva'') follows with more than a quarter of the market, and Sun's Caraco is the third-leading supplier with a share of about 18 percent. The only other supplier currently in the market is Apotex.

Generic chewable carbamazepine tablets are a chewable form of the anticonvulsant that carry the same label and indications as the immediate-release tablets. They are prescribed in the same way as the immediate-release products, but come in a more convenient dosing form, which makes them better-suited for pediatric, geriatric, and other patients who may have difficulty swallowing pills. With a market share of 65 percent, Teva is the leading seller of the generic chewable carbamazepine tablets in 2007, followed by Taro with a share of about 31 percent and Sun, with a share of only 4 percent in 2007. Cadista, the only other approved supplier of generic chewable carbamazepine tablets, is not supplying the product currently.

Sun and Taro are the only companies that have applied for Food and Drug Administration (''FDA'') approval of generic versions of Novartis's Tegretol®-XR extended-release carbamazapine tablets. This extended-release formulation of the drug is indicated for the same uses as the immediate release products but offers the added convenience of a less frequent dosing regimen.

Entry

Entry into the markets for the manufacture and sale of any of these three carbamazepine products would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and FDA drug approval requirements takes at least two years. Entry would not be likely because the relevant markets are relatively small and in decline, so the limited sales opportunities available to a new entrant are likely insufficient to warrant the time and investment necessary to enter.

Competitive Effects

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic immediate-release carbamazepine tablets, generic chewable carbamazepine tablets, and generic extended-release carbamazepine tablets. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Both empirical research and the Commission's many investigations into generic drug competition confirm that finding. Here, the evidence shows that, given the small number of suppliers or prospective suppliers in the relevant markets, the prices of the generic pharmaceutical products at issue decrease with the entry of each additional competitor.

Among currently-marketed products, the acquisition would reduce the number of firms producing generic chewable carbamazepine tablets from three to two, with Teva being the only remaining competitor (at least until Cadista is able to re-enter the market). Similarly, the proposed transaction would reduce from four to three the number of firms remaining in the immediate-release carbamazepine tablet market, leaving Teva as the only other significant player. In the market for generic versions of extended-release carbamazepine tablets, the merging parties are the only two firms in the process of entering, so the proposed transaction likely would eliminate the generic competition that would otherwise exist in that market when the products are introduced.

As the market share information suggests, the proposed transaction would eliminate one of a small number of suppliers in the markets for two currently-marketed generic carbamazepine products, with the likely result that prices would increase above current levels. For extended-release generic carbamazepine, the consolidation would result in a merger to monopoly, with the likely result that prices would be higher than they would be without the transaction and both companies had entered independently.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in

the relevant product markets. Pursuant to the Consent Agreement, Sun is required to divest all of its rights and assets related to the Products to a Commission-approved acquirer no later than the earlier of ten (10) days after the acquisition occurs or ten (10) days after the Commission's Order becomes final. Specifically, the proposed Consent Agreement requires that Sun divest its assets in the Products to Torrent Pharmaceutical Limited (''Torrent'').

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Torrent, a growing generic manufacturer, headquartered in India, is particularly well-positioned to manufacture and market its acquired products and compete effectively in those markets. Currently, Torrent sells generic pharmaceuticals in the United States but none of the relevant products, and therefore its acquisition of the relevant products would not raise independent competitive concerns. Torrent has numerous Abbreviated New Drug Applications (ANDAs'') pending approval at the FDA, and has the resources, capabilities, reputation, and experience in marketing generic products, as well as a central focus on rapidly growing its U.S. generic drugs business, necessary to expeditiously replicate the competition that would be lost with the proposed acquisition.

If the Commission determines that Torrent is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Torrent is not acceptable, Sun must unwind the sale and divest the assets within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Products.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Sun to provide transitional services to enable the Commission-approved acquirer to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Sun.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–19213 Filed 8–19–08; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8 a.m.—5:30 p.m., September 25, 2008.

Place: Hilton Garden Inn, 7830 S. Las Vegas Boulevard, Las Vegas, Nevada 89123, telephone (702) 453–7830, fax (702) 453–7850.

Status: Open to public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Discussed: The meeting will focus on diesel monitoring and control research, communications and tracking developments, training research, chemical hazards in mining, and dust monitoring and control research. The agenda will also include an update from the Associate Director for Mining, NIOSH.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Jeffery L. Kohler, PhD, Executive Secretary, Mine Safety and Health Research Advisory Committee, NIOSH, CDC, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, *telephone:* (412) 386–5301, Fax (412) 386–5300.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 13, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–19240 Filed 8–19–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Project:

Title: Early Head Start Family and Child Experiences Survey (Baby FACES).

OMB No. New Collection

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is conducting a descriptive study of Early Head Start Programs (Early Head Start Family and Child Experiences Survey, or Baby FACES). Baby FACES is a longitudinal study of a nationally representative sample of programs and children in two cohorts (perinatal and age 1) that will collect information about programs, services, families, and children. Data for Baby FACES will be annually collected through interviews with parents, teachers, home visitors, and program directors/managers, as well as direct child assessments, videotaped parent child interactions, and observations of the home environment when children are two and three years old. Data collection will also include quality observations of child care center classrooms and home visits conducted by program staff.

Data will be collected on a sample of approximately 2,000 children and families selected at random from 90 Early Head Start programs. Over the life of the project, Baby FACES will involve four waves of data collection, ending when the second cohort of children (perinatal cohort) reaches 36 months of age. This information collection request covers the first three years of data collection. All waves of data collection will acquire program level information through an hour-long program director interview. Additionally, staff from all programs will complete a simple service

tracking form every week for each child in the sample for all years to determine what services are being delivered to families.

Respondents: Parents of EHS Children, EHS Children, EHS Teachers, Home Visitors, and Program Directors/Managers.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Estimated annual burden hours
Parent Interview	1,715	1	1	1,715
Program Director/Manager Interview	90	1	1	90
Child Care Provider Interview	180	1	1	180
Home Visitor Interview	270	1	1	270
Teacher/Home Visitor Child Rating	450	2.6	0.25	293
Family Service Tracking	450	136	0.1666	10,200
Child Direct Assessment	907	1	1	907
Parent-Child Interaction	907	1	0.25	227
Total Burden Hours:				12,975

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: August 12, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8–19110 Filed 8–19–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request NIH-American Association for Retired Persons (AARP) Comprehensive Lifestyle Interview by Computer (CLIC) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 10, 2008 (Vol. 73, No. 112, p. 32717) and allowed 60-days for public comment. There were no public comments received during this time. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NIH-American Association for Retired Persons (AARP) Comprehensive Lifestyle Interview by Computer (CLIC) Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The Nutritional Epidemiology Branch of the Division of Cancer Epidemiology and Genetics of the National Cancer Institute has planned this study to evaluate the feasibility of using these three new computerized questionnaires as well as the Diet and Health Questionnaire (DHQ), a well-established food frequency questionnaire in a population of early-to-late-middle-aged men and women. Participants will be asked to complete one of four different series (pathways) of computerized questionnaires over a 90 day period, with some questionnaires in a series being completed twice. This evaluation study comprises the necessary performance and feasibility tests for the new computerized questionnaires, which will provide an opportunity to assess the possibility of administering computerized questionnaires in future large prospective cohort studies. The computerized questionnaires will support the ongoing examination between cancer and other health outcomes with nutritional, physical activity, and lifestyle exposures. The computerized questionnaires adhere to The Public Health Service Act, Section 412 (42 U.S.C. 285a–1) and Section 413 (42 U.S.C. 285a–2), which authorizes the Division of Cancer Epidemiology and Genetics of the National Cancer Institute (NCI) to establish and support programs for the detection, diagnosis, prevention and treatment of cancer; and to collect, identify, analyze and disseminate information on cancer research, diagnosis, prevention and treatment. *Frequency of Response:* Either 2 or 4 times, depending on the pathway. *Affected Public:* Individuals. *Type of Respondents:* U.S. adults (aged 50 and over). The annual reporting burden is displayed in the table below. The estimated total annual burden hours being requested is 2616. The annualized cost to respondents is estimated at: $46,242. There are no

Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Instrument(s) tested	Frequency of response	Average time per response (hours)	Number of respondents/ pathway	Annual hour burden
Senior Adults	Read Invitation	1	1/60	7500	125.000
	Pre-Enrollment	1	10/60	1046	174.333
	Enrollment Process	1	5/60	1035	86.250
Assigned Pathway 1					
	ACT–24	2	15/60	156	78.000
	LHQ	1	20/60	156	52.000
	DHQ	1	30/60	156	78.000
	1 Web Re-entry	1	1/60	156	2.600
Assigned Pathway 2					
	ASA24	2	30/60	156	156.000
	DHQ	1	30/60	156	78.000
	LHQ	1	20/60	156	52.000
	1 Web Re-entry	1	1/60	156	2.600
Assigned Pathway 3					
	ACT–24	2	15/60	362	181.000
	ASA24	2	30/60	362	362.000
	LHQ	1	20/60	362	120.667
	DHQ	1	30/60	362	181.000
	1 Web Re-entry*	1	1/60	362	6.033
Assigned Pathway 4					
	ACT–24	2	15/60	362	181.000
	ASA24	2	30/60	362	362.000
	LHQ	1	20/60	362	120.667
	DHQ	1	30/60	362	181.000
	3 Web Re-entries**	3	1/60	362	18.100
	Evaluation Survey	1	1/60	1035	17.250
Totals					2615.50

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the *Attention:* NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Arthur Schatzkin, M.D., Dr.P.H, Chief, Nutritional Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute, NIH, DHHS, Executive Plaza South, Room 3040, 6120 Executive Blvd., EPS–MSC 7242, Bethesda, MD 20892–7335 or call non-toll-free number 301–594–2931 or e-mail your request, including your address to: *schatzka@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 11, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. E8–19217 Filed 8–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel RAPID Review.

Date: August 25, 2008.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301–443–1959, *csarampo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19284 Filed 8–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel ''NEUROSCIENCE NRSA'S''.

Date: September 12, 2008.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The Doubletree Hotel, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19218 Filed 8–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel ''MEMORY T32''.

Date: September 12, 2008.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Doubletree Hotel, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and, Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19219 Filed 8–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0799]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Application forms should reach the Coast Guard on or before November 30, 2008.

ADDRESSES: You may request an application form by writing Mr. James Magill, Assistant Executive Director of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1414; or by faxing 202–372–1926. Also a copy of the application form, as well as this notice, is available in our online docket, USCG–2008–0799 at *http://www.regulations.gov* and at the Coast Guard's Advisory Committee homeport Web page at: *https://homeport.uscg.mil/nosac.* Send your completed application to the Assistant Executive Director at the street address above.

FOR FURTHER INFORMATION CONTACT: Commander Patrick W. Clark, Executive Director of NOSAC, or James M. Magill, Assistant Executive Director, telephone 202 372–1414, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee established under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). It consists of 15 regular members who

have particular knowledge and experience regarding offshore technology, equipment, safety and training, as well as environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Stewardship regarding safety, security and rulemaking matters relating to the offshore mineral and energy industries. This advice assists the Coast Guard in developing policy and regulations and formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets approximately twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for five positions. These positions will begin in January 2009. Applications should reach us by November 30, 2008. If we do not receive sufficient qualified applicants by the deadline we may consider applications received later if they arrive within a reasonable time before we make our recommendations to the Secretary of Homeland Security.

To be eligible, applicants should have experience in one of the following categories: (1) Offshore supply vessel services including geophysical services, (2) construction of offshore facilities, (3) offshore operations, (4) offshore drilling or (5) offshore production of oil and gas. Please state on the application form which of the five categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are interested in applying to become a member of NOSAC, send a completed application form to Mr. James Magill, Assistant Executive Director of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1414; or by faxing 202–372–1926. Send the application form in time for it to be received by the DFO on or before November 30, 2008.

A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov*, enter the docket number for this notice (USCG–2008–0799) in the Search box, and click ''Go''.

Dated: August 7, 2008.

J.G. Lantz

Director of Commercial Regulations and Standards, Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E8–19179 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Form I–730, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–730, Refugee/Asylee Relative Petition; OMB Control No. 1615–0037.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2008, at 73 FR 28493 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0037 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–730. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: August 12, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–18954 Filed 8–19–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Glen Canyon Dam Adaptive Management Work Group (AMWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Date and Location: The AMWG will conduct the following meeting:

Date: Tuesday-Wednesday, September 9–10, 2008. The meeting will begin at 9:15 a.m. and conclude at 5:30 p.m. the first day and begin at 8 a.m. and conclude at 5 p.m. on the second day. The meeting will be held at Little America Hotel, 2515 E. Butler Avenue, Grand Ballroom B, in Flagstaff, Arizona.

Agenda: The purpose of the meeting will be for the AMWG to receive updates and discuss the following items: research and monitoring on the March 2008 high flow experiment, trout predation, the endangered humpback chub population, sediment conservation in the Colorado River, non-native fish control, hydropower economics, the existing Strategic Plan, and desired future resource conditions. There also will be updates on biological opinion conservation measures, basin hydrology, and activities of the Lees Ferry Trout Fishery Ad Hoc Group. The AMWG will also deliberate on the Fiscal Year 2009 proposed budget and workplan and develop a motion for a budget recommendation to the Secretary of the Interior. To view a copy of the draft agenda and other meeting materials, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/08sep09/index.html.*

Time will be allowed for any individual or organization wishing to make formal oral comments at the meeting. To allow for full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone (801) 524–3715; facsimile (801) 524–3858; e-mail at: *dkubly@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; facsimile (801) 524–3858; *e-mail* at: *dkubly@uc.usbr.gov.*

Dated: August 1, 2008.

Tom Ryan,

Manager, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. E8–19245 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14854–A, F–14854–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Iqfijouaq Company. The lands are in the vicinity of Eek, Alaska, and are located in:

Seward Meridian, Alaska

T. 1 N., R. 72 W.,
Secs. 3.
Containing approximately 522 acres.

T. 2 N., R. 72 W.,
Secs. 6 and 7
Secs. 17 to 20, inclusive;
Secs. 28, 29, 33, and 34.
Containing approximately 5,286 acres.

T. 3 N., R. 73 W.,
Secs. 35 and 36.
Containing approximately 1,237 acres.

T. 1 N., R. 74 W.,
Secs. 2, 3, 4, and 8;
Secs. 9 and 10;
Secs. 16 to 20, inclusive.
Containing approximately 5,719 acres.

T. 2 N., R. 74 W;
Secs. 34 and 35.
Containing approximately 1,064 acres.

T. 3 N., R. 74 W.,
Secs. 2 and 4;
Secs. 5 to 9, inclusive;
Sec. 16.
Containing approximately 4,512 acres.

T. 4 N., R. 74 W.,
Secs. 5 to 8, inclusive;
Sec. 15;
Secs. 17 to 20, inclusive;
Secs. 22, 23, 26 and 27;
Secs. 29 to 32, inclusive;
Sec. 35.
Containing approximately 9,744 acres.

T. 4 N., R. 75 W.,
Secs. 1, 12, 13, and 24;
Secs. 25 and 36.
Containing approximately 1,444 acres.
Aggregating approximately 30,672 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Iqfijouaq Company. Notice of the decision will also be published four times in Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 19, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a

week, to contact the Bureau of Land Management.

Charmain McMillan,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–19241 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14825–A, F–14825–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Alakanuk Native Corporation. The lands are in the vicinity of Alakanuk, Alaska, and are located in:

Seward Meridian, Alaska

T. 29 N., R. 80 W.,
Secs. 1 to 4, inclusive;
Secs. 8, 11, 18, and 19.
Containing approximately 4,155 acres.
T. 30 N., R. 80 W.,
Secs. 7 to 10, inclusive;
Secs. 13 to 17, inclusive;
Secs. 19 to 25, inclusive;
Sec. 35.
Containing approximately 8,679 acres.
T. 29 N., R. 81 W.,
Secs. 25 and 36.
Containing approximately 1,199 acres.
T. 28 N., R. 82 W.,
Secs. 1 to 4, inclusive;
Secs. 9, 16, and 21.
Containing approximately 3,967 acres.
Aggregating approximately 18,000 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Alakanuk Native Corporation.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 19, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–19243 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT924–5101–ER–E044, MTM 97296; IDI 35970]

Notice of Intent To Prepare an Environmental Impact Statement for the Mountain States Transmission Intertie Project in Montana and Idaho, Possible Land Use Plan Amendments, and Notice of Public Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) gives notice of intent to prepare an Environmental Impact Statement (EIS) to address potential effects of a proposed project by NorthWestern Energy to build and operate a new 500 kV electric transmission line requiring a special use permit, right-of-way grant, and/or temporary use permit for construction, operation, and maintenance of a 500kV electric transmission line and associated substation, including new access roads. The transmission line is known as the Mountain States Transmission Intertie (MSTI) Project. NorthWestern Energy's three project alternatives range from 390 to 430 miles in length, but additional alternatives or variations on alternatives may be developed through the environmental review process. Alternatives for the proposed transmission line would pass over private, state, and federally managed lands in Montana and Idaho. Federally managed lands include lands administered by the BLM, U.S. Forest Service (USFS), Department of Agriculture (USDA) Agricultural Research Service (ARS), U.S. Sheep Experiment Station, and U.S. Department of Energy (DOE) Idaho National Laboratory. Authorization of this proposal may require the amendment of the BLM and the USFS land use plans (Forest Plans, Management Framework Plans, and Resource Management Plans).

DATES: This notice initiates the public scoping process. Comments concerning the scope of the analysis should be received by October 10, 2008. The BLM will host open houses in the following communities:

Montana

- September 9, 2008—Copper King Hotel, 4655 Harrison Avenue, Butte, Montana;
- September 10, 2008—Three Forks High School, 210 East Neal, Three Forks, Montana;
- September 11, 2008—University of Montana Western, Lewis and Clark Room, Dillon, Montana.

Idaho

- September 16, 2008—Red Lion Canyon Springs, 1357 Blue Lakes Boulevard N., Twin Falls, Idaho;
- September 17, 2008—Arco/Butte Business Incubator Center, 159 N. Idaho Street, Arco, Idaho;
- September 18, 2008—Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho.

All public meetings will be held 7 to 9 p.m. mountain daylight savings time. Additional meeting announcements will be made by news release to the media, individual letter mailings, and postings on the project Web sites listed below.

ADDRESSES: You may submit comments or resource information by any of the following methods:

- *Web site: http://blm.gov/mt/st/en/prog/lands_realty/projects.htm.*
- *E-mail: MT_MSTI@blm.gov.*
- *Mail:* Mark A. Mackiewicz, National Project Manager, Bureau of Land Management, Washington Office, c/o Price Field Office, 125 South 600 West, Price, Utah 84501.
- *Courier or Hand Delivery:* Mark A. Mackiewicz, National Project Manager, Bureau of Land Management, Washington Office, c/o Price Field Office, 125 South 600 West, Price, Utah 84501.

Or

- *Web site: http://www.deq.mt.gov/MFS/MSTI/MSTIindex.asp.*
- *E-mail: DEQQMSTI@mt.gov.*

• *Mail:* Greg Hallsten, EIS Coordinator, Director's Office, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901.

• *Courier or Hand Delivery:* Greg Hallsten, EIS Coordinator, Director's Office, Montana Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620.

Documents pertinent to the right-of-way application may be examined at:

• *http://www.deq.mt.gov/MFS/MSTI/MSTIindex.asphttp://www.blm.gov/mt/st/en/prog/lands_realty/projects.htm.*

FOR FURTHER INFORMATION CONTACT: To receive information and/or to have your name added to our mailing list, contact Mark A. Mackiewicz, National Project Manager, Bureau of Land Management, Washington Office, c/o Price Field Office, 125 South 600 West, Price, Utah 84501.

SUPPLEMENTARY INFORMATION: The BLM will hold public meetings to obtain input on potential impacts, alternatives, and mitigation. To provide the public an opportunity to review the proposal and project information, the BLM expects to hold three meetings in Idaho and three meetings in Montana along the proposed and alternative alignments. The meetings will be conducted in an ''open house'' format where the BLM staff and project proponents will be available to explain project details and gather information from interested individuals or groups. A period for formal comments will be provided. The draft EIS is scheduled for release in late spring 2009, and the final EIS is scheduled for completion in late fall 2009.

For lands in Montana, NorthWestern Energy is preparing an application for a Certificate of Compliance under the Montana Major Facility Siting Act (MFSA), and the Montana Department of Environmental Quality will then proceed with the environmental review under the Montana Environmental Policy Act (MEPA) and MFSA. The BLM will develop an EIS designed to meet the standards of analysis required for compliance with both federal and state regulations. Each agency will serve as the lead agency for ensuring compliance under their respective jurisdictions. The EIS must comply with NEPA 1969, as amended by the Environmental Quality Improvement Act of 1970, 42 U.S.C. 4371, *et seq.* and all other applicable laws, executive orders, regulations, and direction.

The federal environmental review process described above will guide the public and agency review in Idaho. The BLM will consult with state and local agencies affected by the project. Construction cannot commence until all local, state, and federal permits and regulatory requirements are met. Applications for right-of-way and special use permit have been submitted for the use and occupation of BLM- and USFS-administered lands, respectively.

The new transmission line would begin at the new Townsend Substation, which would be constructed in southwestern Montana about five miles southeast of the city of Townsend. As proposed, the line would proceed southwest to an enlarged substation east of Anaconda, Montana. The line would proceed south into southeastern Idaho, connecting to Idaho Power's existing Midpoint Substation, 10 miles north of Jerome, Idaho. The transmission line towers would be constructed of lattice steel or tubular steel approximately 125 feet high, with an average span of 1,400 feet. An approximate 220-foot-wide right-of-way would be required. The BLM is responsible for issuance of a right-of-way for the BLM federally managed lands by authority of the Federal Land Policy Management Act (FLPMA). The BLM field offices and National Forests that are likely to be involved are:

• *In Idaho:* Burley Field Office, Shoshone Field Office, Upper Snake Field Office, and Caribou-Targhee National Forest.

• *In Montana:* Butte Field Office, Dillon Field Office, Helena National Forest, and Beaverhead-Deerlodge National Forest.

Cooperating agencies identified at this time include the USFS and the Montana Department of Natural Resources and Conservation (MDNRC). The ARS and the Department of Energy have been invited to participate in the project as a cooperating agency.

Through public scoping, the BLM expects to identify various issues, potential impacts, mitigation measures, and alternatives to the proposed action. At present, the BLM has identified the following issues and concerns:

• Location of residences and communities.
• Agricultural lands.
• Cultural and historic resources.
• Park and recreational areas.
• Visual impacts.
• Water resources including lakes, streams, wetlands and floodplains.
• Sensitive plants, animals, and habitats.
• Socioeconomic effects including electric rate effects.
• Public health and safety.

The BLM will analyze the proposed action and no action alternatives, as well as other possible alternatives to the proposed power line location and access routes. The BLM encourages you to send us your comments concerning the power line project as proposed and feasible alternative locations, possible mitigation measures, and any other information relevant to the proposed action.

Authorization of this proposal may require amendment of one or more BLM or USFS land use plans. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) and the USFS is complying with 36 CFR 219.9 to notify the public of potential amendments to land use plans. If a Resource Management Plan, Management Framework Plan, or Forest Plan Amendment is necessary, the BLM and the USFS will integrate the land use planning process with the NEPA analysis process for this project. The responsible official who will sign the Record of Decision for the BLM will be Tim Bozorth, Field Manager, BLM Dillon Field Office. The responsible official who will sign the Record of Decision for the USFS will be Bruce Ramsey, Forest Supervisor, Beaverhead-Deerlodge National Forest.

Your input is important and will be considered in the environmental analysis process. All comment submittals must include the commenter's name and street address. Comments including the names and addresses of the respondent will be available for public inspection at the above offices during their business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except federal holidays.

Any persons wanting to be added to a mailing list of interested parties can call or write to the BLM as described in this notice. Additional informational meetings may be conducted throughout the process to keep the public informed of the progress of the EIS.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 11, 2008.

Howard A. Lemm,

Acting State Director, Montana State Office.

[FR Doc. E8–19335 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1910–BK, Group 40, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Army Corps of Engineers.

The land we surveyed is:

Fourth Principal Meridian, Illinois

T. 6 S., R. 7 W.

The plat of survey represents the dependent resurvey of the fractional township boundary, the subdivisional lines and the resurvey of the lock and dam no. 24 acquisition boundary in Sections 1, 2 and 12, Township 6 South, Range 7 West, of the Fourth Principle Meridian, in the State of Illinois, and was accepted August 12, 2008.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we accepted or dismissed all protests and they have become final, including decisions on appeals. Copies of the plat will be made available upon request and prepayment of the reproduction fees.

Dated: August 14, 2008.

Ronald J. Eberle,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–19242 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XZ]

Resource Advisory Council Meeting

AGENCY: Northeast California Resource Advisory Council, Susanville, California, Bureau of Land Management, Interior.

ACTION: Notice of meeting location change.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday and Friday, Sept. 18 and 19, 2008, in the Conference Room of the BLM Alturas Field Office, 708 West 12th St., Alturas, California. The meeting location is changed from an earlier announced location of the BLM Surprise Field Office, 602 Cressler St., Cedarville, California.

SUPPLEMENTARY INFORMATION: The original meeting notice was published in the **Federal Register** on Aug. 4, 2008 (Volume 73, No. 150, Notices, page 45242). Agenda items remain unchanged from the original announcement.

FOR ADDITIONAL INFORMATION: Tim Burke, BLM Alturas Field Manager, at (530) 233–4666, or Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E8–19238 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 98495]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior to withdraw approximately 3,968 acres of National Forest System land from the mining laws for 20 years to protect cultural resources, including rock art of great cultural, scientific, and public interest within Craven Canyon.

DATES: Comments and requests for a public meeting must be received by November 18, 2008.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Black Hills National Forest, 1019 North 5th Street, Custer, South Dakota 57730 and BLM Montana State Director, 5001 Southgate Drive, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Valerie Hunt, Forest Service, Rocky Mountain Region, 303–275–5071 or Sandra Ward, BLM Montana State Office, 406–896–5052.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, has filed an application with the Bureau of Land Management, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000) to withdraw the following-described National Forest System land within the Black Hills National Forest, from location or entry under the United States mining laws for 20 years, subject to valid existing rights:

Black Hills National Forest, Black Hills Meridian

T. 7 S., R. 2 E.,
Sec. 12, E½SE¼;
Sec. 13, N½NE¼;
Sec. 24, S½NE¼, E½SW¼, and SE¼;
Sec. 25, W½NE¼, NE¼NW¼, and SE¼.

T. 7 S., R. 3 E.,
Sec. 7, lots 3 and 4, E½SW¼, N½SE¼ and SW¼SE¼;
Sec. 18;
Sec. 19;
Sec. 30, lots 3 and 4, E½W½, and E½;
Sec. 31;
Sec. 32.

The area described contains 3,968.17 acres in Fall River County.

The purpose of the proposed withdrawal is to protect and preserve existing Native American cultural resources, including rock art of great cultural, scientific and public interest within Craven Canyon. The southern Black Hills in general contain an unparalleled diversity of rock art styles. The most significant representation of this diversity exists in Craven Canyon. The rock art sites in this area continue to yield information not found in other types of archaeological sites.

The use of a right-of-way or cooperative agreement would not provide adequate protection for this area due to the broad scope and nondiscretionary nature of the general mining laws.

No alternative sites are feasible due to the cultural significance of the area.

No water will be needed to fulfill the purpose of the requested withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Black Hills National Forest.

Comments, including names and street addresses of respondents, will be available for public review at the Forest Supervisor's Office, Black Hills National Forest, 1019 North 5th Street, Custer, South Dakota 57730, during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor's Office within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from location or entry under the United States mining laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. The land will remain open to other uses within the statutory authority pertinent to National Forest lands and subject to discretionary approval.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Authority: 43 CFR 2310.3–1(b).

Dated: August 12, 2008.

Theresa M. Hanley,

Deputy State Director, Division of Resources.

[FR Doc. E8–19262 Filed 8–19–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

South Coast Conduit/Upper Reach Reliability Project, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public meeting for the draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation) is the National Environmental Policy Act (NEPA) Federal lead agency and the Cachuma Operation and Maintenance Board (COMB) is the California Environmental Quality Act (CEQA) State lead agency. Together, these agencies have made available for public review and comment the draft EIS/EIR.

The South Coast Conduit (SCC)/Upper Reach Project involves installation of a second water pipeline for improving water supply reliability to Cachuma Project (CP) and State Water Project (SWP) customers on the south coast of Santa Barbara County. This draft EIS/EIR addresses changes to the physical, natural, and human environment that would occur as a result of installing and operating the second pipeline.

DATES: Submit written comments on the draft environmental document on or before October 3, 2008.

A public meeting will be held on September 10, 2008 from 6 p.m. to 8 p.m. in Santa Barbara, CA to discuss the purpose and content of the draft environmental document and to provide the public an opportunity to comment on the draft environmental document. Written comments will be accepted at the public meeting.

ADDRESSES: Send written comments on the draft EIS/EIR to Ms. Judi Tapia, Bureau of Reclamation, 1243 'N' Street, Fresno, CA 93721–1831, or Mr. Brett Gray, Cachuma Operation and Maintenance Board, 3301 Laurel Canyon Road, Santa Barbara, CA 93105–2017.

The public meeting will be held at the COMB office, 3301 Laurel Canyon Road, Santa Barbara, CA.

Copies of the draft document may be requested from Ms. Judi Tapia at 1243 'N' Street, Fresno, CA 93721–1831, or at *jtapia@mp.usbr.gov*, or from Mr. Brett Gray, COMB, 3301 Laurel Canyon Road, Santa Barbara, CA 93105, or at *bgray@cachuma-board.org*.

The draft EIS/EIR is also accessible from the following Web sites: *http://www.usbr.gov/mp/nepa/index.cfm or http://www.comb.org*. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the draft EIS/EIR are available.

FOR FURTHER INFORMATION CONTACT: Ms. Judi Tapia, Bureau of Reclamation, at 559–487–5138, TDD 559–487–5933, or Mr. Brett Gray, COMB, at 805–687–4401.

SUPPLEMENTARY INFORMATION: The existing SCC/Upper Reach pipeline provides approximately 80 percent of the water supply for communities along the South Coast of Santa Barbara County. Reclamation owns the SCC facilities and COMB manages the facilities under a Transfer of Operations and Maintenance Contract with Reclamation. The SCC operates at capacity for extended periods of time, and during peak demands it is not able to provide the water needed. No redundant supply or pipeline exists to convey CP or SWP water to the South Coast if the Upper Reach of the SCC is out of service due to scheduled and/or unexpected repairs. The proposed project would increase the operational flexibility, reliability, and conveyance capacity of the SCC between the South Portal of Tecolote Tunnel and the Corona Del Mar Water Treatment Plant to accommodate peak demand levels and to allow maintenance of one pipeline while the other is operational. The total amount of water delivered per year, however, would not increase.

The draft EIS/EIR considers the direct, indirect, and cumulative effects on the physical, natural, and human environment that may result from the construction and operation of the SCC/Upper Reach second pipeline. The draft EIS/EIR addresses potentially significant environmental issues and recommends adequate and feasible mitigation measures to reduce or eliminate significant environmental impacts, where possible. Two alternative pipeline alignments as well as no project and no action alternatives are addressed.

Copies of the draft EIS/EIR are available for public review at the following locations:

- Bureau of Reclamation, South-Central California Area Office, 1243 'N' Street, Fresno, CA 93721–1831.

• Santa Barbara Central Public Library, 40 East Anapamu Street, Santa Barbara, CA 93101.
• Goleta Public Library, 500 North Fairview Avenue, Goleta, CA 93117.
• COMB office, 3301 Laurel Canyon Road, Santa Barbara, CA 93105–2017.

Special Assistance for Public Meetings

If special assistance is required at the public meeting, please contact Mr. Brett Gray, COMB, at 805–687–4401, or at *bgray@cachuma-board.org*, no less than five working days before the meeting to allow Reclamation/COMB to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your name, 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: July 11, 2008.

Donald R. Glaser,

Regional Director, Mid-Pacific Region.

[FR Doc. E8–19246 Filed 8–19–08; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–596]

In the Matter of Certain GPS Chips, Associated Software and Systems, and Products Containing Same; Notice of Commission Decision Not To Review a Final Determination Finding No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') issued on June 13, 2008 finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 13, 2007, based on a complaint filed by SiRF Technology, Inc. (''SiRF'') of San Jose, California. 72 FR 11378 (March 13, 2007). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain GPS chips, associated software and systems, and products containing the same by reason of infringement of certain claims of United States Patent Nos. 6,304,216 (''the '216 patent''); 7,043,363 (''the '363 patent''); 7,091,904 (''the '904 patent''); and 7,132,980 (''the '980 patent''). The complaint named as respondent Global Locate, Inc. of San Jose, California (''Global Locate''). The complaint and notice of investigation were later amended to include one additional claim of the '904 patent. Subsequently, the investigation was terminated with respect to the '904 patent, the '980 patent, and certain claims of the '216 and the '363 patents, and the complaint and notice of investigation were amended to add Broadcom, Inc. of Irvine, California (''Broadcom'') as a respondent to the investigation.

On March 13, 2008, the Commission determined not to review an ID issued by the ALJ granting in part SiRF's motion for summary determination that it had satisfied the importation requirements of 19 U.S.C. 1337. On March 20, 2008, the Commission further determined not to review an ID issued by the ALJ granting SiRF's motion for summary determination that it had satisfied the economic prong of the domestic industry requirement.

On June 13, 2008, the ALJ issued his final ID finding no violation of section 337 by respondents Global Locate and Broadcom. The ID included the ALJ's recommended determination on remedy and bonding. In the subject ID, the ALJ found that Global Locate's products do not infringe asserted claims 1, 6, 10–12, 17–19, 64, 65, 69, 70, 72, or 73 of the '216 patent. The ALJ also found that the asserted claims are not invalid as anticipated by any prior art. The ALJ further found that SiRF failed to prove that a domestic industry exists for articles protected by the '216 patent. In addition, the ALJ found that Global Locate's products do not infringe asserted claims 7, 8, 10–12, 16, and 18–20 of the '363 patent. The ALJ also found that the asserted claims of the '363 patent are invalid as anticipated by each of the GPS Builder System and the First GPS system. The ALJ further found that SiRF has established that a domestic industry exists for articles protected by the '363 patent.

On June 27, 2008, SiRF filed a petition for review seeking review of the ALJ's ID with respect to the '216 patent. Also on June 27, 2008, Global Locate filed a contingent petition for review, seeking review of certain aspects of the ALJ's findings concerning both the '216 and '363 patents. On July 7, 2008, Global Locate filed an opposition to SiRF's petition for review and SiRF filed a response to Global Locate's contingent petition for review. Also on July 7, 2008, the Commission Investigative Attorney filed a response to both SiRF's petition and Global Locate's contingent petition.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: August 14, 2008.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–19209 Filed 8–19–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1140–1142 (Final)]

Uncovered Innerspring Units From China, South Africa, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1140–1142 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, South Africa, and Vietnam of uncovered innerspring units, provided for in subheading 9404.10.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* July 30, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of uncovered innerspring units from China, South Africa and Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on December 31, 2007, by Leggett & Platt, Inc., Carthage, MO.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 8, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 22, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 16, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 20, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 15, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 29, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 29, 2008. On November 7, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 10,

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "* * * uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (e.g., twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length. Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring. Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion. Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTS). The HTS subheadings are provided for convenience and customs purposes only; the written description of the scope of these investigations is dispositive."

2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 15, 2008.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–19227 Filed 8–19–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 15, 2008, two proposed Consent Decrees in *United States of America* v. *Camille J. Amato, et al.*, Civil Action No. 08–CV–6366 were lodged with the United States District Court for the Western District of New York.

In this action the United States sought to recover from the defendants response costs incurred by the United States Environmental Protection Agency (''EPA'') in responding to releases or threatened releases of hazardous substances at or from the Penn Yan Superfund Site, located at 15 Waddell Avenue in the Village of Penn Yan, Yates County, New York (the ''Site''). The two Consent Decrees memorialize two separate settlements and require the settling parties to reimburse EPA's past response costs related to the Site.

The first Consent Decree, between the United States and the County of Yates (''Yates County'') in the State of New York, requires that Yates County pay to the EPA Hazardous Substance Superfund the principal sum of $275,000, plus interest, in two installments of $137,500. The first payment is due within 60 days of entry of the Consent Decree, and the second payment is due by the first anniversary of that date.

The second Consent Decree, between the United States and Camille J. Amato, Thomas Amato, Penn Yan Boat Company LLC, Penn Yan Marine Manufacturing Corp., and Camille Properties, Inc., requires the settling parties to pay to the EPA Hazardous Substance Superfund the principal sum of $140,000, plus interest, in three installments. The first payment of $50,000 is due within 30 days of entry of the Consent Decree, with the second and third payments of $45,000 plus interest due on the first and second anniversary of that date, respectively.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Camille J. Amato, et al.*, Civil Action No. 08–CV–6366 (W.D.NY), D.J. Ref. 90–11–3–09115.

The Decree may be examined at the Office of the United States Attorney, Western District of New York, 100 State Street, Rochester, NY 14614, and at U.S. EPA Region II, 290 Broadway, New York, New York 10007. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–19290 Filed 8–19–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 143rd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on September 10, 2008. In addition, the Working Groups assigned by the Advisory Council to study the issues of (1) Phased retirement, (2), spend-down of retirement assets, and (3) hard to value assets/target date funds, will hold public meetings on September 9, 10, and 11. All of the meetings will take place in Room S3215 A–B, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

The purpose of the open meeting of the full Council, which will run from 8:30 a.m. to approximately 9 a.m., is for members to be updated on activities of the Employee Benefits Security Administration and for chairs of this year's Working Groups to provide progress reports on their individual study topics.

The purpose of the open Working Group meetings, which each day will run from 9 a.m. to approximately 5 p.m., with a one hour break for lunch, is for Working Group members to hear testimony from invited witnesses and for discussions of possible recommendations based on the testimony. The focus of the Working Group meeting on September 9 will be on phased retirement, including issues

facing employers who wish to create phased retirement plans, as well as the issues facing employees who wish to take part in phased retirement programs, and whether there are any legal impediments that discourage American workers from continuing to work in their retirement years. The focus of the Working Group meeting on September 10 will be on spending down retirement assets, including the issues and barriers facing plan fiduciaries, plan sponsors, and plan participants as they attempt to evaluate approaches that guarantee periodic income levels at retirement. The focus of the Working Group meeting on September 11 will be on hard to value assets and target date funds, including potential risks and the roles of fiduciaries, trustees, investment managers, accountants/auditors and participants when employee benefit plans invest in hard to value assets, a review of regulatory policy involving assets for which there is not a generally recognized market, and challenges and risks associated with plans' use of target date funds.

Organizations or members of the public wishing to submit a written statement for any of the meetings may do so by submitting 30 copies on or before September 2, 2008 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before September 2 will be included in the record of the relevant meeting. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Larry Good by September 2 at the address indicated. All individuals who plan to attend the meeting should contact Larry Good by September 8 to expedite building access.

Signed at Washington, DC, this 14th day of August, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E8–19233 Filed 8–19–08; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc.; Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 242 to Facility Operating License No. NPF–49 issued to Dominion Nuclear Connecticut, Inc. (the licensee), which revised the Technical Specifications and License for operation of the Millstone Power Station, Unit 3 (the facility) located in New London County, Connecticut. The amendment was effective as of the date of its issuance.

The amendment increased the Millstone Power Station, Unit No. 3 (MPS3) maximum steady-state reactor core power level from the previous licensed thermal power level of 3,411 megawatts thermal (MWt) to 3,650 MWt, which is an increase of approximately 7 percent.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on January 15, 2008 (73 FR 2549). A request for a hearing was filed on March 17, 2008, by the Connecticut Coalition Against Millstone (CCAM) and Nancy Burton. The Atomic Safety and Licensing Board (ASLB) issued an Order dated June 4, 2008. The ASLB Order denied CCAM and Nancy Burton's request for an evidentiary hearing. On June 16, 2008, CCAM and Nancy Burton filed an appeal to the Commission regarding the ASLB Order.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has prepared a Final Environmental Assessment (73 FR 46054), published on August 7, 2008, related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated December 1984.

For further details with respect to this action, see the application for amendment dated July 13, 2007, as supplemented by letters dated July 13, September 12, November 19, December 13, and December 17, 2007; January 10 (4 letters), January 11 (4 letters), January 14, January 18 (5 letters), January 31, February 25 (2 letters), March 5, March 10 (2 letters), March 25, March 27, April 4, April 24, April 29, May 15, May 20, May 21, July 10, and July 16, 2008, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of August 2008.

For the Nuclear Regulatory Commission.

John G. Lamb,

Senior Project Manager, Plant Licensing Branch 1–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–19239 Filed 8–19–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Monday, September 15, 2008, from 9 a.m. to 3:30 p.m. The meeting will be closed to the public from 9 a.m. to 12:30 p.m. and opened to the public from 12:30 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for September 15, 2008, unless otherwise notified.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce-Herbert C. Humphrey Building, B841–B, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting, the following agenda items will be considered.

- Results of Americas Competitiveness Forum.
- Results of the Asia-Pacific Economic Cooperation (APEC) Ministerial Meetings.
- FY08 vs. FY07 U.S./ Export-Import Bank of the United States (EXIM) Loans Issued to Small and Minority Business.
- World Bank Programs for Small Business/IFC.
- Gold Key Service in Latin America.
- U.S. Patent and Trademark Office (UPTO) Work that Helps to Promote U.S. Exports.

Colleen J. Litkenhaus,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. E8–19283 Filed 8–19–08; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a New Information Collection: Certificate of Medical Examination Optional Form (OF) XX—Formerly Standard Form (SF) 78

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted to the Office of Management and Budget (OMB) a request for clearance and use of Optional Form XX (OF–XX), Certificate of Medical Examination, a revision of Standard Form 78 (SF–78). The Certificate of Medical Examination is used by Federal agencies, OPM examining offices, and Federal agency appointing officials to determine medical qualifications for a specific position.

We estimate approximately 45,000 forms will be completed each year. Each form requires from two to three hours to complete. The annual estimated burden is 135,000 hours.

Comments: In the 60-Day Notice published in FR Vol. 71, No. 244, on December 20, 2006, we announced our request for review of a new information collection document, OF–XX, Certificate of Medical Examination. OPM invited receipt of public comment on the Optional Form by February 19, 2007, and received comments from three Federal agencies. All changes and recommendations were considered and incorporated as appropriate into the final OF–XX. A discussion of the comments is provided below.

One agency inquired why OPM was revising the current SF–78. Revision and replacement is necessary because the SF–78 is no longer accurate. Revisions include making the form optional for agencies to use at their discretion, rather than required; to delete outdated references, such as the Federal Personnel Manual; and to incorporate changes required by 29 CFR 1630.13, which relates to prohibited medical inquiries and examinations related to the Equal Employment Opportunity provisions of the Americans with Disabilities Act.

One agency requested that the revised form (OF–XX) be posted to the existing OPM forms Web site; that the form be electronically fillable; and that additional space be provided on the form for a description of employee duties. The OF–XX will be made available on the OPM forms Web site and will be made electronically fillable. Additional space has been provided in Part B of the form for an explanation of employee duties in the subject position.

One agency requested that OPM provide adequate space for the clinician to comment on positive findings. OPM added supplemental space to the ''Conclusion'' section in Part C of the OF–XX.

One agency requested that OPM reformat Part A to allow added room for names; to create separate and distinct parts; to change ''glasses'' to ''corrective lenses''; to add check boxes to areas where an examiner may document his or her interpretation of test results; and to clearly delineate vision and hearing boxes by moving instructions inside of the boxes where results are to be recorded. OPM addressed these concerns in the development of the OF–XX.

For copies of this proposal, contact Margaret A. Miller on (202) 606–2699, Fax (202) 418–3251 or e-mail to *mamiller@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of publication August 20, 2008.

ADDRESSES: *Send or deliver written comments to:*

Angela Bailey, Deputy Associate Director, Center for Talent and Capacity, U.S. Office of Personnel Management, 1900 E. Street, NW., Room 6551, Washington, DC 20415.

And

Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

For Administrative Coordination Contact: J.C. Phillip Spottswood, Medical Policy and Programs, U.S. Office of Personnel Management, 1900 E. Street, NW., Room 6500, Washington, DC 20415, *Telephone:* (202) 606–1389, *Fax:* (202) 606–0864, *e-mail: phil.spottswood@opm.gov.*

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–19196 Filed 8–19–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension of an Expiring Information Collection: Establishment Information Form, Wage Data Collection Form, Wage Data Collection Continuation Form DD 1918, DD 1919, and DD 1919C

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), the U.S. Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for extension of three previously-approved information collection forms for which approval will soon expire. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense (DOD) to establish prevailing wage rates for Federal Wage System employees.

DOD contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

For copies of this proposal, contact Margaret A. Miller on (202) 606–2699, fax (202) 418–3251, or e-mail *mamiller@opm.gov*. Please include a mailing address with your request.

DATES: Submit comments on or before September 19, 2008.

ADDRESSES: Send or deliver comments to:

- Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or *FAX*: (202) 606–4264.
- Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; fax (202) 606–4264; or e-mail *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM published notice of its intention to request an extension of the information collection wage survey forms in the **Federal Register** on May 2, 2008 (73 FR 24322). OPM received no comments.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–19193 Filed 8–19–08; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Rule 15b6–1 and Form BDW, OMB Control No. 3235–0018, SEC File No. 270–17.

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 to revise the collection of information discussed below. The Code of Federal Regulations citation to this collection of information is the following rule: 17 CFR 240.15b6–1.

Broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 737 broker-dealers withdraw from registration annually and, therefore, file a Form BDW via the internet with Web CRD, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. However, the Commission estimates that approximately 127 of these 737 withdrawing broker-dealers would employ third-party filers to file Form BDW. The broker-dealers that employ third-parties would not incur an hour burden and, therefore, do not incur a reporting burden. As discussed below, however, these broker-dealers would incur a cost burden with respect to Form BDW. Therefore, the 610 broker-dealers that withdraw from registration by filing Form BDW themselves, would incur an aggregate annual reporting burden of 152.5 hours (610×0.25 hours).

Broker-dealers that employ third-parties to file Form BDW would not incur a reporting burden, but would incur a cost burden in filing Form BDW. The Commission estimates that 127 broker-dealers would employ third-parties to file Form BDW. These broker-dealers would be billed by third-party filers at an estimated average compensation rate of $44.00 per hour. Therefore, the total annual cost burden to broker-dealers that employ third-party filers to file Form BDW would be approximately $1,397 (i.e., 127×0.25 hours $\times$ $44 per hour) or $11 per withdrawing broker-dealer.

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. Rule 15b6–1 does not have a retention of records requirement.

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 by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov;* and (ii) Lewis W. Walker, Acting CIO/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: August 13, 2008,

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19230 Filed 8–19–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c2–5, OMB Control No. 3235–0198, SEC File No. 270–195.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulations citation to this collection of information is the following: 17 CFR 240.15c2–5.

Rule 15c2–5 prohibits a broker-dealer from arranging or extending certain loans to persons in connection with the offer or sale of securities unless, before any element of the transaction is entered into, the broker-dealer: (1) Delivers to the person a written statement containing the exact nature and extent of the person's obligations under the loan arrangement; the risks and disadvantages of the loan arrangement; and all commissions, discounts, and other remuneration received and to be

received in connection with the transaction by the broker-dealer or certain related persons (unless the person receives certain materials from the lender or broker-dealer which contain the required information); and (2) obtains from the person information on the person's financial situation and needs, reasonably determines that the transaction is suitable for the person, and retains on file and makes available to the person on request a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the rule is necessary to execute the Commission's mandate under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

The Commission estimates that there are approximately 50 respondents that require an aggregate total of 600 hours to comply with the Rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $40.00 for clerical labor, resulting in a total compliance cost of $24,000 (600 hours @ $40.00 per hour).

Although Rule 15c2–5 does not specify a retention period or record keeping requirement under the Rule, nevertheless broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a–4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities prescribed in the Rule. Rule 15c2–5 does not assure confidentiality for the information retained under the Rule.[1] Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending 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 to OMB within 30 days of this notice.

Dated: August 13, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19231 Filed 8–19–08; 8:45 am]

BILLING CODE 8010–01–P

[1] The records required by Rule 15c2–5 would be available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58358; File No. SR–CTA/CQ–2008–02]

Consolidated Tape Association; Notice of Filing of the Twelfth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and Eighth Substantive Amendment to the Consolidated Quotation Plan

August 13, 2008.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on June 19, 2008, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans'').[4] The proposals represent the twelfth substantive amendment made to the Second Restatement of the CTA Plan (''Twelfth Amendment to the CTA Plan'') and the eighth substantive amendment to the Restated CQ Plan (''Eighth Amendment to the CQ Plan''), and reflect changes unanimously adopted by the participants. The Twelfth Amendment to the CTA Plan and the Eighth Amendment to the CQ Plan (''Amendments'') would amend the Plans to: (1) Permit ministerial amendments to the Plans to be submitted to the Commission under the signature of the Chairman of CTA and the CQ Plan Operating Committee, rather than by means of each Participant's execution of a Plan amendment, as Section IV(b) of the CTA Plan and IV(c) of the CQ Plan currently require for most amendments to the Plans; (2) to accommodate recent changes to the names and addresses of certain Participants; and (3) to change the Plans' references to Commission rules to reflect the re-designation of rules by Regulation NMS.[5] The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Description and Purpose of the Amendment

Currently, both Plans require each Participant to execute most amendments to the Plans before the amendments can be filed with the Commission. The Participants believe that this can result in delays and unwarranted administrative functioning in the context of certain amendments that are of a purely ministerial nature. For that reason, the Participants propose to amend the Plans to permit the submission of Plan amendments to the Commission under the signature of the Chairman of CTA and the CQ Plan Operating Committee, in lieu of requiring each Participants' signature indicating that it has executed the Amendment as required by Section IV(b) of the CTA Plan and Section IV(c) of CQ Plan.

The categories of ministerial Plan amendments that the Participants may submit under the signature of the Chairman include amendments to the

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC; Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC (''NASDAQ''); National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc.

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (order temporarily approving CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (order permanently approving CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Plans that pertain solely to any one or more of the following:

(1) Admitting a new Participant into these Plans;

(2) Changing the name or address of a Participant;

(3) Incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of the Plans (e.g., the Commission rule establishing the Advisory Committee);

(4) Incorporating a change (i) that the Commission has implemented by rule, (ii) that requires conforming language to the text of the Plans (e.g., the Commission rule amending the revenue allocation formula), and (iii) that a majority of all Participants has voted to approve; [6]

(5) Incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete (e.g., language regarding the Intermarket Trading System Plan).

The Participants believe that submission of these categories of ministerial amendments will improve the efficiency of the administration of the Plans and that the signature of each Participant provides no safeguards that are necessary or appropriate in the context of these categories of ministerial amendments.

In addition, the Participants propose to amend the Plans to reflect changes in the corporate names of the Chicago Board Options Exchange, Incorporated (formerly, Chicago Board Options Exchange, Inc.; ''CBOE''), the Financial Industry Regulatory Authority, Inc. (formerly, the National Association of Securities Dealers, Inc.) and National Securities Exchange, Inc. (formerly, National Securities Exchange) and changes in the street address of CBOE.

The Participants propose to change references in the Plans to rules of the Commission to reflect the re-designation of certain Commission rules as a result of Regulation NMS. The proposed amendments to the names and addresses of Participants and to the references to the Commission rules serve as examples of ministerial amendments that the Participants could submit to the Commission under the signature of the Chairman if these Amendments are approved.

The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendment

The Participants propose to implement the change upon Commission approval of the Amendments.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The Amendments will impose no burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plans as a result of the Amendments.

6. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The Amendments are so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall be Required by the Plan.

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Twelfth Substantive Amendment to the CTA Plan and the Eighth Amendment to the CQ Plan are 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–CTA/CQ–2008–02 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–CTA/CQ–2008–02. 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 Plan amendment that are filed with the Commission, and all written communications relating to the Plan amendment change between the Commission and any person, other than those that may be withheld from the

[6] The Commission notes that the vote of the Participants woudl concern the exact wording of conforming language, but not the change implemented by the Commission.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA. 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–CTA/CQ–2008–02 and should be submitted on or before September 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19229 Filed 8–19–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58354; File No. SR–NSX–2008–15]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Operative Date of NSX Rule 2.11

August 13, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2008, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 National Stock Exchange, Inc. (''NSX'' or the ''Exchange'') is proposing to accelerate the effectiveness of NSX Rule 2.11 in order to implement outbound routing through NSX Securities, LLC (''NSX Securities'') and to amend NSX Rule 2.12 which relates to the Exchange's provision of routing services procured from a third party.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to accelerate the effectiveness of NSX Rule 2.11 in order to implement outbound routing with respect to orders entered in the Exchange's trading system, NSX BLADE®, through an affiliate of the Exchange, NSX Securities. In addition, the Exchange proposes to amend NSX Rule 2.12 which relates to the Exchange's current provision of outbound routing of orders from the Exchange to other trading centers (''Routing Services'') using a third party.

As background, the Exchange originally planned to provide Routing Services for orders entered into NSX BLADE through NSX Securities. NSX Rule 2.11 was approved by the Securities and Exchange Commission (''Commission'') in connection with the approval of the Exchange's new trading rules relating to NSX BLADE on August 31, 2006.[3] The ability to route orders entered into NSX BLADE to away markets for execution at the best available prices is a key feature of NSX's new system. NSX Rule 2.11 specifically provides for certain terms and conditions under which NSX Securities will provide Routing Services. Among other things, an ETP Holder's use of NSX Securities to route orders to another Trading Center is optional. ETP Holders that do not want to route orders through NSX Securities may submit order instructions to NSX under NSX Rule 11.11 such as Immediate-or-Cancel, Post Only or NSX Only.

However, as NSX Securities had not completed its registration process as a broker-dealer with the National Association of Securities Dealers, Inc. (''NASD'') (and thus would not be available to provide Routing Services) by the launch of NSX BLADE,[4] the Exchange proposed the adoption of NSX Rule 2.12 so that the Exchange could route through a third party in the interim period.[5] In the adoption of Rule 2.12, the Exchange requested a finite period of effectiveness so NSX Securities could complete its registration as a broker-dealer and the Exchange could evaluate its options for providing Routing Services to ETP Holders. The Exchange subsequently filed several rule change proposals to extend the effective period for NSX Rule 2.12, and to delay the effectiveness of NSX Rule 2.11 to certain dates, unless earlier amended, while the Exchange considered its options and made system and other changes to implement outbound routing through NSX Securities.[6] Rule 2.12 currently provides that it is effective through September 30, 2008, with the ability to route through NSX Securities under Rule 2.11 becoming effective on October 1, 2008.

In the instant proposed rule change, the Exchange is requesting that the operative date of Rule 2.11 be accelerated to August 8, 2008. The Exchange and NSX Securities have made all necessary changes to activate NSX Securities, including NSX Securities being approved as a broker-dealer, entering into a clearing and routing agreement, and making the required systems and regulatory changes. Further, because the current Rule 2.12 is effective until September 30, 2008, the Exchange proposes to amend NSX Rule 2.12 to provide that during that period it be operative only in the event that the Exchange is not

[7] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006), File No. SR–NSX–2006–08. This rule change filing was filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'').

[4] In January 2007, NSX Securities' application for registration as a broker-dealer was approved by the NASD. To date, the Exchange has not used NSX Securities for routing services.

[5] *See* Securities Exchange Act Release No. 54808 (November 21, 2006), 71 FR 69163 (November 29, 2006), File No. SR–NSX–2006–15.

[6] *See* Securities Exchange Act Release No. 55624 (April 12, 2007), 72 FR 19732 (April 19, 2007), File No. SR–NSX–2007–04; Securities Exchange Act Release No. 56067 (July 13, 2007), 72 FR 39650 (July 19, 2007), File No. SR–NSX–2007–08; Securities Exchange Act Release No. 56587 (October 1, 2007), 72 FR 57087 (October 5, 2007), File No. SR–NSX–2007–10; and Securities Exchange Act Release No. 57574 (March 27, 2008), 73 FR 18026 (April 2, 2008), File No. SR–NSX–2008–08.

able to provide Routing Services through Rule 2.11. Thus, an alternative router would be available as necessary, and on an all-or-none basis, in the course of transitioning the Routing Services to NSX Securities under Rule 2.11. This rule change proposal does not change Rule 2.12's current expiration of September 30, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will take effect upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(5) of Rule 19b–4[10] thereunder, because the proposal effects a change in an existing order-entry system or trading system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. This proposal does not raise these concerns as it primarily pertains to the operative date of a rule that has already been approved by the Commission through a rule change filed under Section 19(b)(2) of the Act. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2008–15 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–NSX–2008–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2008–15 and should be submitted on or before September 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19228 Filed 8–19–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Pacific Gateway Exchange, Inc., Pallet Management Systems, Inc., Panaco, Inc., Paragon Financial Corp. (n/k/a NewMarket Latin America, Inc.), and Patriot Motorcycle Corp.; Order of Suspension of Trading

August 18, 2008

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pacific Gateway Exchange, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pallet Management Systems, Inc. because it has not filed any periodic reports since the period ended September 28, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Panaco, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Paragon Financial Corp. (n/k/a NewMarket Latin America, Inc.) because it has not filed any periodic reports since the period ended December 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Patriot Motorcycle Corp. because it has not filed any periodic reports since the period ended December 31, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange

Act of 1934, that trading in the securities of the above-listed companies, including the debt securities of Panaco, Inc., is suspended for the period from 9:30 a.m. EDT on August 18, 2008, through 11:59 p.m. EDT on August 29, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–19362 Filed 8–18–08; 11:15 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11272]

Iowa Disaster Number IA–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA—1763—DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 and continuing.

Effective Date: 08/12/2008.

Physical Loan Application Deadline Date: 07/28/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 02/27/2009.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Iowa, dated 05/27/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Cherokee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–19234 Filed 8–19–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #11264 and #11265; IOWA Disaster Number IA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 11.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of IOWA (FEMA–1763–DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 and continuing.

DATES: *Effective Date:* 08/12/2008.

Physical Loan Application Deadline Date: 09/29/2008.

EIDL Loan Application Deadline Date: 02/27/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of IOWA, dated 05/27/2008, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Audubon, Winnebago, Adair Cass, Grundy, Guthrie Henry.

Contiguous Counties: (Economic Injury Loans Only): All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Acting Associate Administrator for Disaster, Assistance.

[FR Doc. E8–19235 Filed 8–19–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #11370; New Hampshire Disaster #NH–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of NEW HAMPSHIRE (FEMA–1782–DR), dated 08/11/2008.

Incident: Severe Storms, Tornado, and Flooding.

Incident Period: 07/24/2008.

DATES: *Effective Date:* 08/11/2008.

Physical Loan Application Deadline Date: 10/10/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/11/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/11/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Belknap, Carroll, Rockingham.

Contiguous Counties (Economic Injury Loans Only):

New Hampshire: Coos, Grafton, Hillsborough, Merrimack, Strafford.

Maine: Oxford, York.

Massachusetts: Essex.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and for economic injury is 11370.

(Catalog of Federal Domestic Assistance Number 59002 and 59008).

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–19236 Filed 8–19–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 315]

Delegation by the Deputy Secretary of State to the Under Secretary of State for Democracy and Global Affairs To Convene an Interagency Committee on Climate Change

By virtue of the authority vested in me by Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby delegate to the Under Secretary of State for Democracy and Global Affairs, to the extent authorized by law, the authority to convene an interagency meeting on climate change consistent with Section 684(b) of the Consolidated Appropriations Act, FY 2008 (Pub. L. 110–161).

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary or the Deputy Secretary may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 7, 2008.

John Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–19294 Filed 8–19–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6325]

In the Matter of the Review of the Designation of Real Irish Republican Army as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the circumstances that were the basis for the 2003 re-designation of the Real Irish Republican Army as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designation of the Real Irish Republican Army as a foreign terrorist organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: August 11, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–19282 Filed 8–19–08; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Notice of Meeting

Agency Holding the Meeting: Tennessee Valley Authority (Meeting No. 08–04).

Time and Date: 10 a.m. EDT, August 20, 2008, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

Agenda

Old Business

Approval of minutes of May 19, 2008, Board meeting.

New Business

1. Chairman's Report.
A. Committee Assignments.
2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee.
A. Fiscal Year 2009 budget.
B. Rate Review and possible adjustment.
C. Fiscal Year 2009 Bond Issuance Authorization.
D. Pricing issues.
i. LIP/LFP annual product reviews.
ii. Seasonal Pricing TOU/Market Days Pilots for FY09.
iii. Price quote for directly served customer.
E. TVA contribution to the TVA Retirement System.
4. Report of the Operations, Environment, and Safety Committee.
A. Settlement of claims with Bechtel and Stone & Webster Construction, Inc.
B. Contracts related to nuclear fuel.
i. Contracts with Demson Mines and Cameco for uranium.
ii. Contract with ARE VA NP for Blended Low Enriched Uranium processing services.
iii. Contract with Westinghouse for WBN Unit 2 fuel fabrication services.
C. Contract with General Electric for equipment, parts, and services.
D. Contract with ANR for gas transportation.
E. Revised Transmission Service Guidelines.
5. Report of the Audit, Governance, and Ethics Committee.
A. Committee Charters.
B. TVA Board Practice on delegations of authority.
6. Report of the Community Relations and Energy Efficiency Committee.
A. Lenoir City Park—Public recreation easement.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 13, 2008.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E8–19182 Filed 8–19–08; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending August 8, 2008. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0240.

Date Filed: August 5, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 2008.

Description: Application of Air Dominicana S.A. requesting a foreign air carrier permit and exemption authority to engage in (i) charter foreign air transportation of persons and property between points in the Dominican Republic and points in the United States

and beyond, with or without stopovers, and (ii) Fifth Freedom charter service pursuant to the prior approval requirements.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E8–19285 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Aviation Proceedings, Agreements Filed the Week Ending August 8, 2008

Aviation Proceedings, Agreements filed the week ending August 8, 2008.

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0241.

Date Filed: August 7, 2008.

Parties: Members of the International Air Transport Association.

Subject: Technical Correction: Mail Vote 574—Resolution 010d, TC3 Within South East Asia, Special Passenger Amending Resolution, from Brunei Darussalam to Singapore (Memo 1232), *Intended effective date:* 1 September 2008.

Docket Number: DOT–OST–2008–0242.

Date Filed: August 8, 2008.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 573—Resolutions 010c. TC3/TC23/TC31/TC123 Special Passenger Amending, Resolution to/from Japan (Memo 1470), *Intended effective date:* 1 October 2008.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E8–19286 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 2008, Vol. 73, No. 95, page 28183. The form is used by private citizens involved in aviation to nominate private citizens for recognition of their volunteer service to the FAA.

DATES: Please submit comments by September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: General Aviation Awards Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0574.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 150 Respondents.

Frequency: This information is collected annually.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 150 hours annually.

Abstract: The form is used to nominate private citizens for recognition of their significant voluntary contribution to aviation education and flight safety. The agency/industry committee will use the information on the form to select eight regional winners and one national winner from each group. The respondents are private citizens involved in aviation.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 12 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–19108 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 2008, vol. 73, no. 95, page 28183. Respondents conducting general operation and flight of aircraft or any activity that could encroach on airspace must apply for approval.

DATES: Please submit comments by September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Application for Certificate of Waiver or Authorization.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0027.

Form(s): 7711–2.

Affected Public: An estimated 25,231 Respondents.

Frequency: This infonnation is collected on occasion.

Estimated Average Burden per Response: Approximately 32 minutes per response.

Estimated Annual Burden Hours: An estimated 13,646 hours annually.

Abstract: U.S. Code authorizes the issuance of regulations governing the use of navigable airspace. Respondents conducting general operation and flight of aircraft or any activity that could encroach on airspace must apply for approval.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 12, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–19109 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Baltimore-Washington International Airport, Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 0.239 acres of land (a portion of parcel 165 as identified on the Exhibit ''A'' Property Map) at the Baltimore-Washington International Airport, Baltimore, Maryland, to the Maryland State Highway Administration (MSHA) for the improvement of Corporate Center Drive. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The parcel was acquired with local funding only based on the Noise Compatibility Plan (NCP) developed under the PART 150 Update.

DATES: Comments must be received on or before September 19, 2008.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ellen Sample, at the following address: Ellen Sample, Manager, Division of Noise and Land Use Compatibility, Maryland Aviation Administration, P.O. Box 8766, BWI Airport, Maryland 21240–0766.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on August 6, 2008.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. E8–19107 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Rialto Municipal Airport, Rialto, CA

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

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Rialto Municipal Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 19, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Brian Armstrong, Manager, Federal Aviation Administration, Los Angeles Airports District Office, LAX–600, 15000 Aviation Blvd, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Richard Scanlan, Director of Aviation and Solid Waste Management, City of Rialto, 150 Palm Avenue, Rialto, CA 92376.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Armstrong, Manager, Federal Aviation Administration, Los Angeles Airports District Office, LAX—600, 15000 Aviation Blvd, Lawndale, CA 90261, *Telephone:* (310) 725–3644, *e-mail: Brian. Armstrong@faa.gov, fax:* (310) 725–6849.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Rialto Municipal Airport under the provisions of the AIR 21 and Section 4408 of Public Law 109–59. The following is a brief overview of the request:

The Congress of the United States adopted Section 4408 of Public Law 109–59 on August 10, 2005. In part, Section 4408 specifically states; ''Notwithstanding any law, regulation or grant assurance, but subject to the requirements of this section, the United States shall release all restrictions, conditions, and limitations on the use, encumbrance, conveyance, or closure of the Rialto Municipal Airport, in Rialto, California, to the extent such restrictions, conditions, and limitations are enforceable by the United States.'' This legislation authorized the closure of the Rialto Airport, the transfer of certain assets of the Rialto Municipal Airport, the sale of the Rialto Municipal Airport Properties by the City of Rialto and the distribution of 45% of the fair market value of the local land sales proceeds to the United States for the benefit of a commercial airport complying with the criteria set forth in the legislation. This airport has been identified as the San Bernardino International Airport owned and operated by the San Bernardino International Airport Authority.

The FAA is carrying out the direction of Congress. This notice invites public comment on FAA's intent to rule on the request for release for the Rialto Airport property in its totality. There will be no further public notices published on this matter. However, the FAA intends to process the release in incremental phases. Smaller parcels will be released individually and the entire release will occur over time. The purpose of processing the release, in this fashion, is to allow for the early sale of parcels not currently used for aviation purposes at the Rialto Municipal Airport. This incremental sale will allow the Rialto

Municipal Airport to remain open and functional as an airport for a period of time while the proceeds from the early land sales are used for the design and construction of certain general aviation infrastructure and other aviation improvements on the San Bernardino International Airport.

Any person may inspect the request in person, by appointment, at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person, by appointment, at the Rialto Municipal Airport, telephone number (909) 820–2622.

Issued in Los Angeles, California, on July 18, 2008.

Mark A. McClardy,

Manager, Airports Division.

[FR Doc. E8–19105 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Governmental Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 21, 2008, from 8:30 a.m. to 5 p.m. The Charting Group will meet October 22 and 23, 2008, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be hosted by the FAA National Aeronautical Charting Office (NACO), 1305 East West Highway, SSMC 4, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; *fax:* (405) 954–2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Office, Requirements and Technology Staff, AJW–3521, 1305 East West Highway, SSMC4, Station 5544, Silver Spring, MD 20910; *telephone:* (301) 713–2631, *fax:* (301) 713–1960.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 21 through October 23, 2008, from 8:30 a.m. to 5 p.m. at the FAA National Aeronautical Charting Office (NACO), 1305 East West Highway, SSMC 4, Silver Spring, MD 20910.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 3, 2008, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 3, 2008. Public statements will only be considered if time permits.

Issued in Washington, DC, on August 13, 2008.

John A. Moore,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. E8–19106 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–37]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions 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 any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 9, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0370 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.
- *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.

SUPPLEMENTARY INFORMATION: 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 19477–19478).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 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.

Issued in Washington, DC, on August 15, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

PETITIONS FOR EXEMPTION

Docket No.: FAA–2008–0370.

Petitioner: Federal Express Corporation.

Section of 14 CFR Affected: 14 CFR 121.651(b)(2).

Description of Relief Sought: FedEx seeks an exemption from § 121.651(b)(2) which would allow for a FAA-certified Enhanced Flight Vision System (EFVS) equipped FedEx aircraft and a properly trained FedEx flight crew to continue an approach past the final approach fix, or where the final approach fix is not used, begin the final approach segment of a straight-in instrument approach procedure—even if the latest weather report for that airport issued by the U.S. National Weather Service, a source approved by the Administrator, reports the visibility to be less than the visibility minimums for that procedure.

[FR Doc. E8–19237 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Policy Regarding Runway Closures During the Winter Season

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of proposed operational criteria, request for comments.

SUMMARY: FAA is proposing to amend Advisory Circular 150/5200–30, *Airport Winter Safety and Operations*, to establish new operational criteria for the closure of runways (paragraph 5–5) due to inclement weather during the winter season. The proposed operational criteria specify those events associated with winter contaminated runways that trigger airport operators to implement runway closure procedures. A subsequent requirement associated with the implementation of such closures is the timely notification of airport users and the public by issuance of a Notice to Airmen (NOTAM). To ensure that the intent of this safety initiative is attained, the airport's *Snow and Ice Control Plan*, required per 14 CFR Part 139, *Certification of Airports*, should contain a formal memorandum-of-understanding between the airport traffic control tower and the airport operator that covers at a minimum (1) that the airport traffic control tower will transmit timely needed information to the airport operator, such as, all pilot braking action reports of ''POOR'' and ''NIL'' and (2) procedures that the airport traffic control tower will follow upon the airport operator's decision to close a runway. The draft advisory circular is available for downloading at *http://www.faa.gov/airports_airtraffic/airports/resources/draft_advisory_circulars/*

DATES: Comments must be received before September 15, 2008.

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

E-mail: rick.marinelli@faa.gov.

Fax: 202–267–3688.

Mail: Federal Aviation Administration, Office of Airport Safety and Standards, Airport Engineering Division, AAS–100, Room 621, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: George I. Legarreta, Federal Aviation Administration, Office of Airport Safety and Standards, Airport Engineering Division, AAS–100, Room 621, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: 202–267–8766.

SUPPLEMENTARY INFORMATION: The aviation industry and FAA are working jointly within the *Takeoff and Landing Performance Assessment Aviation Rulemaking Committee* to define the various conditions associated with the necessity for a runway closure during the winter season. An expected outcome of the joint effort is issuance of a *Paved Runway Safety Assessment Matrix* for use by airport operators for decision making. The matrix will associate runway surface conditions, pilot braking action reports, and other secondary criteria, with the industry accepted practices of describing runway frictional qualities, namely, GOOD–MEDIUM–POOR–NIL. The FAA plans to incorporate the committee's matrix in a future revision to the above referenced advisory circular.

Issued in Washington, DC on August 14, 2008.

Rick Marinelli,

Manager, Airport Engineering Division, AAS–100.

[FR Doc. E8–19270 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, California

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a Draft Environmental Impact Statement will be prepared for a proposed highway improvement project on Interstate 710 (Ocean Boulevard to State Route 60—a distance of approximately 18 miles) in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, Division of Environmental Planning, District 7, 100 South Main Street, Suite 100, Los Angeles, CA 90012, (213) 897–0703.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans will prepare an Environmental Impact Statement (EIS) on a proposal to for constructing freeway improvements to Interstate 710 (I–710) from Ocean Boulevard to State Route 60 in Los Angeles County, California. The project consists of improving I–710 to accommodate a freight movement corridor and/or general purpose lanes. Depending on the alternative selected, the project may also include modifications to the I–405, State Route 91, I–105, State Route 60, and I–5 interchanges. A Major Corridor Study (MCS) for the project was completed in March 2005. It identified ten general purpose lanes next to a separated four-lane freight movement facility as the Locally Preferred Strategy (LPS).

The purpose of the proposed project is to (1) Improve air quality and public health, (2) improve traffic safety, (3) address design deficiencies, (4) address projected traffic volumes, (5) address projected growth in population, employment, and economic activities related to goods movement.

Alternatives under consideration include:

- No Build.
- Transportation Systems Management/Transportation Demand Management (TSM/TDM) and Transit—may include up to eight new ramp meters, improved signage, parking

restrictions on major arterials, empty container management through policies and incentives, implementation of truck emission/safety enforcement facilities, expanded public transportation, and an expanded Intelligent Transportation System (ITS) to include entire study area.

- Alternative Goods Movement Technology.
- Arterial Highway and I–710 Congestion Relief Improvements.
- I–710 Mainline Improvements.
  - Option A—10 general-purpose lanes with no carpool lanes.
  - Option B—eight general-purpose lanes with one carpool lane in each direction (total of 10).
- Locally Preferred Strategy Hybrid Design (I–710 Mainline Improvements with the addition of a separated four lane freight movement facility)—Includes ten general purpose lanes next to a separated four lane freight movement facility from the Ports of Los Angeles and Long Beach (Ocean Boulevard) to the UP and BNSF intermodal yards southeast of the I–710/I–5 interchange. This alternative is a community-based recommendation from the previous I–710 Major Corridor Study: Major Opportunity /Strategy Recommendations and Conditions.

These basic alternatives will have additional design variations, which provide optional lane use (general purpose, High Occupancy Vehicle, Transportation Systems Management), optional on and off ramp modifications, and other engineering details. These alternatives may be refined, combined with various different alternatives, or be removed from further consideration, as more analysis is conducted on the project alternatives.

Analysis supporting the EIS will determine the type of facility necessary to meet the existing and future transportation needs in the corridor.

The following permits may be required to construct the proposed project:

- U.S. Army Corps of Engineers Section 404 permit.
- Section 401 Water Quality Certification from the California Regional Water Quality Control Board.
- 1602 Streambed Alteration Agreement from the California Department of Fish and Game.
- Incidental take permit from the United States Fish and Wildlife Service (USFWS).
- Incidental take permit from the National Oceanic and Atmospheric Administration (NOAA) Fisheries.
- State Coastal Development Permit.
- Federal Coastal Zone Management Act Consistency Determination.
- Encroachment permits from the various cities in which project construction would occur.

Caltrans is holding public scoping meetings to provide an overview of the project, summary of the environmental process and issues addressed, and receive input regarding environmental issues and the suggested scope and content of the EIR. An Agency Scoping Meeting will be held on September 10, 2008 from 2 p.m. to 4 p.m., followed by a Public Scoping Meeting from 6:30 p.m. to 8:30 p.m. at Progress Park in the City of Paramount. Two additional Public Scoping Meetings will be held on September 9, 2008 at Rowen Elementary School in East L.A. and September 11, 2008 at Cabrillo High School in Long Beach from 6:30 to 8:30 p.m.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, tribal governments and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. It is anticipated that the Draft EIS will be available for public and agency review and comment in mid-2010. Public meetings will be held in study area communities in the summer of 2010. In addition, public hearings will be held. Public notice will be given for the time and place of the public meetings and hearings. The EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions about this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Nancy E. Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–19247 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 9, 2008, and comments were due by August 8, 2008. No comments were received.

DATES: Comments must be submitted on or before September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Joanne Spittle, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5979; or *e-mail: joanne.spittle@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

OMB Control Number: 2133–0529.

Type of Request: Extension of currently approved collection.

Affected Public: Small passenger vessel owners who desire to operate in the coastwise trade.

Forms: None.

Abstract: Owners of small passenger vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

Annual Estimated Burden Hours: 100 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: August 14, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–19260 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to review and approve an updated and revised Intermodal Report, finalize an expanded Marine Transportation System outreach and education program to addresses the economic benefits that our ports and the Marine Transportation System contribute to the nation, and discuss other issues of importance to the Marine Transportation System. A public comment period is scheduled for 11:15 a.m.–11:45 p.m. on Wednesday, September 17, 2008. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by September 10, 2008. Commenter's will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by September 27, 2008.

DATES: The meeting will be held on Wednesday, September 17, 2008, from 8:30 a.m. to 5 p.m. and Thursday, September 18, 2008, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Sheraton National Hotel, 900 South Orme Street Arlington, Virginia 22204. The hotel's phone number is 703–521–1900.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–309, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *richard.lolich@dot.gov.*

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

By order of the Maritime Administration.

Dated: August 13, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–19257 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0077]

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 EL SHADDAI.

SUMMARY: As authorized by 46 U.S.C. 12121, 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–2008–0077 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 46 U.S.C. 12121 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 September 19, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0077. 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 EL SHADDAI is:

Intended Use: ''Occasional day and overnight charters in waters off California coast.''

Geographic Region: ''California.''

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: August 13, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–19258 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0078]

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 MISS LINDA.

SUMMARY: As authorized by 46 U.S.C. 12121, 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–2008–0078 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 46 U.S.C. 12121 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 September 19, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0078. 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 MISS LINDA is:

Intended Use: ''charter fishing.''

Geographic Region: ''Virginia, Maryland and North Carolina.''

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: August 13, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–19259 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0009; Notice 2]

Bridgestone Firestone North American Tire, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

Bridgestone Firestone North American Tire, LLC (BFNT) determined that certain tires that it manufactured in September and October of 2007, failed to comply with the labeling requirements of paragraph S5.5.1(a) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles.* FMVSS No. 139 requires that radial tires manufactured before September 1, 2009 for use on motor vehicles that have a gross vehicle weight (GVWR) rating of 10,000 pounds or less must be labeled with the Tire Identification Number (TIN) on one side of the tire and a full TIN or partial TIN on the opposite side. Pursuant to 49 CFR part 573, BFNT filed a noncompliance report with the National Highway Traffic Safety Administration (NHTSA) notifying NHTSA of the noncompliance.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR part 556, on November 30, 2007, BFNT submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 on the basis that this noncompliance is inconsequential to motor vehicle safety. NHTSA published notice of receipt of the petition, with a 30-day public comment period, on January 29, 2008, in the **Federal Register**. 73 FR 5261. In response to the petition, NHTSA did not receive any comments. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2008–0009.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5299, facsimile (202) 366–7002.

Summary of BFNT's Petition

On November 30, 2007, BFNT petitioned NHTSA for a determination that a noncompliance with approximately 3,963 Bridgestone brand P235/60R17, Dueler H/T 684 II tires, produced in the Aiken plant during the DOT weeks 38, 39, 40, 41, and 42 in 2007 is inconsequential to motor vehicle safety. *See* 73 FR 5261. Paragraph S5.5.1(a) of FMVSS No. 139 requires that radial tires manufactured before September 1, 2009 for motor vehicles less than 10,000 GVWR be permanently labeled with (1) a full TIN required by 49 CFR part 574 on one sidewall of the tire, and (2) except for retreaded tires, either the full or a partial TIN containing all characters in the TIN, except for the date code, and at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.[1]

In its petition, BFNT stated that the 3,963 P235/60R17 size Bridgestone Dueler H/T 684 II tires, produced at its Aiken plant (DOT serial code is 7XOUBD43807 through 7XOUBD44207) were mismarked. BFNT reported that

[1] Tires manufactured after September 1, 2009 must be labeled with the TIN on the intended outboard sidewall of a tire and either the TIN or partial TIN on the other sidewall. 49 CFR 571.139 S5.5.1(b). If a tire manufactured after September 1, 2009 does not have an intended outboard sidewall, one sidewall must be labeled with the TIN and the other sidewall must have either a TIN or partial TIN. *Id.*

1,862 of the noncompliant tires are within its control and already remedied, and 2,101 remain in the replacement market in the U.S.

BFNT described the noncompliance as a failure to mark the tires with a complete or partial TIN on the sidewall opposite the sidewall with the full TIN. Thus, BFNT describes the noncompliance as follows:

> Actual stamping is BLANK. (on one sidewall). Correct stamping should be: 7XOUBD4 (on that sidewall).

BFNT argued that the noncompliant tires meet or exceed all performance requirements of FMVSS No. 139, and, that the labeling noncompliance will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

BFNT further claimed that the TIN only becomes important in the event of a safety recall campaign so that the consumer may properly identify the recalled tire(s). The noncompliant tires here are marked in a manner that is sufficient for notice to consumers and compliant with tire labeling requirements prior to the adoption of the new tire marking requirements in 2002. BFNT contends, therefore, that for this noncompliance, any safety recall campaign communication, if necessary, could include in the listing of recalled TINs with a direction to the consumer to read both sidewalls of each tire on the vehicle for the TINs or partial TINs so that the consumer would know that these noncompliant tires are included in any future recall.

BFNT requested that NHTSA consider its petition and grant an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 on the basis that the noncompliance described above is inconsequential as it relates to motor vehicle safety.

NHTSA's Decision

NHTSA does not agree that BFNT's noncompliance with FMVSS No. 139 is inconsequential to motor vehicle safety. As discussed below, the tire markings required by paragraph S5.5.1(a) of FMVSS No. 139 provide valuable information to assist consumers in determining if their tires are the subject of a safety recall.

The Firestone tire recalls in 2000 highlighted the difficulty that consumers experienced when attempting to determine whether a tire is subject to a recall if the tire is mounted so that the sidewall bearing the TIN faces inward, *i.e.*, underneath the vehicle. After a series of congressional hearings about the safety of and experiences regarding the Firestone tires involved in those recalls, Congress passed and the president signed into law the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000. Pub. L. 106–414, 114 Stat. 1800.

One matter addressed by the TREAD Act was tire labeling. Section 11 of the TREAD Act required a rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall.

In response to the TREAD Act's mandate, NHTSA published a final rule that, among other things, required that the TIN be placed on a sidewall of the tire and a full or partial TIN be placed on the other sidewall. *See* 67 FR 69600, 69628 (November 18, 2002), as amended 69 FR 31306 (June 3, 2004). In the preamble to the 2002 final rule, the agency identified the safety problem which prompted the issuance of the rule. 67 FR at 69602, 69606 and 69610. The agency explained that when tires are mounted so that the TIN appears on the inward facing sidewalls, motorists have three difficult and inconvenient options for locating and recording the TINs. Consumers must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded. Without any TIN information on the outside sidewalls of tires, the difficulty and inconvenience of obtaining the TIN by consumers results in the reduction of the number of people who respond to a tire recall campaign and a number of motorists who unknowingly continue to drive vehicles with potentially unsafe tires.

BFNT suggests that a recall of these tires could include an instruction to check the inboard sidewall if the TIN is not found on the outboard sidewall. This approach is inadequate. The noncompliance here is the exact problem that plagued millions of Firestone tire owners in 2000 and one that Congress mandated that NHTSA address. When the TIN is placed on one sidewall of a tire and that sidewall is mounted on the inboard side of a wheel, it is very difficult and inconvenient for the consumer to locate and record the TIN. In such situations, consumers who attempt to determine if a tire is within the scope of a recall may not be able to read the inboard sidewall without taking one of the three inconvenient steps discussed above. The difficulty and inconvenience that locating a TIN under these circumstances poses serious impediments to the successful recall of the noncompliant tire, which may result in motorists continuing to drive their vehicles with potentially unsafe tires.

While NHTSA has determined in the past that in some instances TIN marking omissions were inconsequential to motor vehicle safety, those determinations occurred prior to the adoption of FMVSS No. 139 pursuant to the TREAD Act. Following the enactment of the TREAD Act, NHTSA found that there is a safety need for a full TIN on one sidewall and a full or partial TIN on the other sidewall. As previously discussed, FMVSS No. 139 now requires TIN markings on both sidewalls of a tire so that consumers can readily determine if a tire is subject to a safety recall. Accordingly, the omission of a TIN or partial TIN on either sidewall is now considered to be a serious safety problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, BFNT's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: August 14, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–19324 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0133; Notice 1]

Hyundai Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Hyundai Motor Company (Hyundai), has determined that certain replacement seat belt assemblies sold for various model and model year Hyundai vehicles, including the 2008 model year vehicles, did not fully comply with paragraphs S4.1(k) and S4.1(l) of 49 CFR 571.209 Federal Motor Vehicle Safety Standards (FMVSS) No. 209 *Seat Belt Assemblies.* Hyundai has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Hyundai has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Hyundai's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are an unspecified quantity of seat belt replacement assemblies delivered prior to May 9, 2008.

Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 require:

(k) Installation instructions. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, ''Motor Vehicle Seat Belt Installations,'' November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., ''front right''] in [insert specific vehicle make(s) and model(s)].

(l) Usage and maintenance instructions. A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

Hyundai explains that the subject replacement seat belt assemblies were sold without the installation, usage, and maintenance instructions required by paragraphs in S4.1(k) and S4.1(l) of FMVSS 209.

Hyundai makes the argument that the replacement seat belt assemblies in question are only made available to Hundai authorized dealerships for their use or subsequent resale and that the Hyundai parts ordering process used by its dealers clearly identifies the correct replacement part required by model year, model, and seating position. Furthermore, Hyundai states that its replacement seat belt assemblies are designed to be installed properly only in their intended application.

Hyundai additionally states that technicians at Hyundai dealerships that replace seat belts have access to the installation instruction information available in workshop manuals. Installers other than Hyundai dealership technicians also have seat belt installation information available because Hyundai workshop manual information, including seat belt replacement information, is made available to the general public on the Hyundai Service Web site (*http://www.hmaservice.com*) which provides free access to every Hyundai Shop Manual, including information about seat belt installation.

Hyundai additionally argues that a significant portion of paragraph S4.1(k) appears to address a concern with proper installation of aftermarket seat belts into vehicles that were not originally equipped with these restraints. Hyundai also notes that SAE J800c which is cited in the regulation involves installation of ''universal type seat belt assemblies,'' particularly where no seat belt had previously been installed, and that these concerns do not apply to replacement seat belts. The vehicles involved in this petition have uniquely designed seat belt components and replacement seat belt assemblies are installed into the identical location from which the original parts were removed.

Hyundai also states that proper seat belt usage instructions are clearly explained in the Owner's Manual that is included with each new vehicle. Information concerning maintenance, periodic inspection for wear and function of the seat belts, as well as for their proper usage is included in the vehicle Owner Manual and this information equally applies to replacement seat belt assemblies.

Hyundai first became aware of the noncompliance when it was contacted by NHTSA in response to a consumer inquiry received by NHTSA.

Hyundai also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Hyundai states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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.). DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

You may view documents submitted to a docket at the address and times given above. You may also view the

documents on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 19, 2008.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: August 14, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–19325 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1020X]

East Penn Railroad, LLC—Abandonment Exemption—in Berks and Montgomery Counties, PA

On July 31, 2008, East Penn Railroad, LLC (ESPN) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an 8.6-mile line of railroad extending from milepost 0.0 at Pottstown to milepost 8.6 at Boyertown, in Berks and Montgomery Counties, PA. The line traverses United States Postal Service Zip Codes 19464 and 19512.[1]

The line does not contain federally granted rights-of-way. Any documentation in ESPN's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 18, 2008.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[2]

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 9, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–1020X, and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before September 9, 2008.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 11, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–19035 Filed 8–19–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 258X)]

Union Pacific Railroad Company—Abandonment Exemption—in Shelby County, TN

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.61-mile line of railroad known as the Memphis Subdivision, extending from milepost 387.0 to milepost 389.61 in Shelby County, TN. The line traverses United States Postal Service Zip Codes 38107 and 38108.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 19, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental

[1] ESPN's then new owner, Regional Rail, LLC, a noncarrier, discovered that one of ESPN's predecessors, Penn Eastern Rail Lines, Inc., had consummated the acquisition of the subject line in July 2003, but inadvertently failed to obtain prior Board approval for that acquisition. ESPN filed for and obtained such authority. *See East Penn Railroad, LLC—Acquisition Exemption—Berks County, PA*, STB Finance Docket No. 35089 (STB served Nov. 1, 2007).

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 2, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 9, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 25, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by August 20, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 11, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–19056 Filed 8–19–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35172]

Iowa Northern Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement entered into between UP and Iowa Northern Railway Company (Iowa Northern), has agreed to grant Iowa Northern overhead temporary trackage rights between milepost 81.5 and milepost 86.0 on UP's Cedar Rapids Industrial Lead in Cedar Rapids, IA, a distance of approximately 4.5 miles.[1]

The transaction may be consummated on or after September 4, 2008, and the temporary trackage rights are intended to expire on May 31, 2009.[2] The purpose of the temporary trackage rights is to enable Iowa Northern to continue to provide interchange service between Iowa Northern and Cedar Rapids and Iowa City Railway (CIC), as a result of severe flooding and the resulting loss of CIC's railroad bridge over the Cedar River in Cedar Rapids.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than August 28, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35172, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on T. Scott Bannister, 305 Second Street Southeast, Suite 400, Cedar Rapids, IA 52401.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 12, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–19135 Filed 8–19–08; 8:45 am]

BILLING CODE 4915–01–P

[1] An amendment was filed on August 8, 2008, referencing the correct mileage in this proceeding as 4.5 miles (in lieu of 4.9 miles as originally filed).

[2] Although applicant states that the parties propose consummating the transaction on August 31, 2008, no consummation may take place under Board rules until September 4, 2008—the effective date of the exemption. *See* 49 CFR 1180.4(g).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–23: OTS Nos. 04433 and H4522]

First Savings Financial Group, Inc., Clarksville, IN; Approval of Conversion Application

Notice is hereby given that on August 12, 2008, the Office of Thrift Supervision approved the application of First Savings Bank, F.S.B., Clarksville, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treaas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Central Regional Office, 1 South

Wacker Drive, Suite 2000, Chicago, Illinois 60606.

Dated: August 13, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–19127 Filed 8–19–08; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Wednesday,
August 20, 2008

Part II

Department of Homeland Security

Coast Guard

46 CFR Parts 71, 114, 115 et al.
Passenger Weight and Inspected Vessel Stability Requirements; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 71, 114, 115, 122, 170, 171, 172, 174, 175, 176, 178, 179, and 185

[Docket No. USCG–2007–0030]

RIN 1625–AB20

Passenger Weight and Inspected Vessel Stability Requirements

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations governing the stability of passenger vessels and the maximum number of passengers that may safely be permitted on board a vessel. The average American weighs significantly more than the assumed average weight per person utilized in current regulations, and the maximum number of persons permitted on a vessel is determined by several factors, including an assumed average weight for each passenger. Updating regulations to more accurately reflect today's average weight per person will maintain intended safety levels by taking this weight increase into account. The Coast Guard is also taking this opportunity to clarify and update intact stability and subdivision and damage stability regulations.

DATES: Comments and related material must reach the Docket Management Facility on or before November 18, 2008. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB before November 18, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0030 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.

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at *oira_submission@omb.eop.gov* or fax at 202–395–6566. The subject line should include the docket number (USCG–2007–0030) and say ATTN: Desk Officer, U.S. Coast Guard, DHS. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer, U.S. Coast Guard.

You may inspect the material proposed for incorporation by reference at room 1308, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1372. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. William Peters, U.S. Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), telephone 202–372–1371. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0030), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. 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–2007–0030) in the Search box and click ''Go >>.'' You may also visit 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.

C. 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.*

D. 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**.

E. Technical Review by Society of Naval Architects and Marine Engineers

An *ad hoc* panel of the Society of Naval Architects and Marine Engineers (SNAME) has reviewed reports delivered to the Coast Guard by BMT Designers and Planners and CSC Advanced Marine Center and provided technical advice concerning vessel stability and increased passenger weight. SNAME is a nonprofit, professional society, and the panel's 28 experienced naval architects are able to provide technical peer review from a broad cross-section of the designers, builders and operators of passenger vessels. The Charter for *Ad Hoc* Panel 15 on Loading Criteria for People Aboard Passenger Vessels and a memorandum from the panel's chairman to the Coast Guard concerning the Phase 1 Impact Analysis Report from BMT Designers and Planners are available in the docket at *http://www.regulations.gov.* A list of the panel's members and information about their meetings is available at *http://www.sname.org/committees/tech_ops/O44/passenger/activity-15.html.* The Coast Guard will make any additional reports from the *ad hoc* panel available to the public by posting them to the docket.

II. List of Acronyms

2008 IS Code International Code on Intact Stability, 2008
ABS American Bureau of Shipping
CDC Centers for Disease Control and Prevention
CFR Code of Federal Regulations
COI Certificate of Inspection
DHS Department of Homeland Security
DOT Department of Transportation
FAA Federal Aviation Administration
EO Executive Order
FR Federal Register
GM Metacentric height
LBP Length Between Perpendiculars
LCG Longitudinal Center of Gravity
MARPOL International Convention for the Prevention of Pollution from Ships
MSC Marine Safety Center
NHANES National Health and Nutrition Examination Survey
MISLE Marine Information for Safety and Law Enforcement
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
OCMI Officer in Charge, Marine Inspection
OMB Office of Management and Budget
PSSC Passenger Ship Safety Certificate
PSST Pontoon Simplified Stability Proof Test
SBA United States Small Business Administration
SNAME Society of Naval Architects and Marine Engineers
SOLAS International Convention for the Safety of Life at Sea
SST Simplified Stability Proof Test
U.S.C. United States Code
VCG Vertical Center of Gravity

III. List of Terms

Angle of heel means the angle of the vessel's centerline to the upright when the vessel is inclined.

Deadweight survey: See *lightweight survey.*

Draft means the vertical distance from the bottom of the hull (*i.e.*, the keel) or another point that protrudes below the hull to the waterline.

Exposed waters generally means more than 20 nautical miles from a harbor of safe refuge.

Flush deck means any continuous, unbroken deck from stem to stern.

Freeboard means the vertical distance from the deck edge to the waterline. A decrease in freeboard (i.e. reduced freeboard) corresponds to an increase in draft.

Heel is the degree to which a ship leans transversely as a result of variable and dynamic external forces.

Heeling moment is generally a force acting through a distance that causes a vessel to roll or heel to one side. A heeling moment that is larger than the vessel's righting ability can cause the vessel to overturn or capsize. Coast Guard requirements limit the amount of heel a vessel can have when wind or passenger movement causes the heeling moment.

Inclining or stability test is a methodical process that involves moving a series of known weights on a vessel and measuring the resulting change in the equilibrium heel angle to determine the vessel's stability characteristics.

Intact stability generally means the stability properties of a vessel without any damage to its watertight buoyancy volume.

Length between perpendiculars (LBP) means the length of the summer load waterline from the vessel's stern post to the point where it crosses the vessel's stem.

Lightship displacement or lightweight means the weight of a vessel that is complete in all respects, but without consumables, stores, cargo, passengers, crew, and their effects, and without any liquids on board except fixed ballast and machinery and piping fluids, such as lubricants and hydraulics, which are at operating levels.

Lightweight survey is a part of the stability test that determines any changes in lightship displacement and longitudinal center of gravity (LCG). It involves taking an audit of all items that should be added, deducted, or relocated on a vessel so that the observed condition of the vessel can be adjusted to the lightship condition. Often referred to as a *deadweight survey.*

Longitudinal center of gravity (LCG) means the location along the vessel's length at which the total weight of the vessel may be assumed to act.

Master means a person holding a valid license that authorizes that person to serve as a master of a passenger vessel.

Open boat means a vessel not protected from entry of water by means of a complete weathertight deck.

Operator means the person or entity who provides operational instructions to and receives reports from the master of the vessel and is responsible for the vessel's maintenance and repair, schedule of operations, crewing, etc.

Owner means the person or entity holding title to the vessel.

Partially protected waters generally means not more than 20 nautical miles from a harbor of safe refuge.

Passenger heel refers to the heeling moment that occurs when passengers move to one side of the vessel's centerline, causing the vessel to roll, or heel.

Pontoon vessel generally means any vessel having two or more sealed hulls, which are structurally independent and detachable from the vessel's deck or cross structure.

Protected waters generally means sheltered waters that present no special hazards.

Sailing vessel means a vessel that is propelled by wind, using sails.

Subdivision and damage stability refers to the stability characteristics of a vessel when damaged, generally focusing on flooding of watertight compartments.

Vertical center of gravity (VCG) means the height above the keel at which the total weight of the vessel may be assumed to act.

Vessel stability refers to the tendency of a ship to remain upright or return to upright when inclined by forces that are caused by the action of waves, wind, passenger movement, etc.

Waterplane means the horizontal area obtained from the intersection of the ship's hull with the water's surface at a particular draft. The waterplane area is used to calculate how much immersion will be caused by additional weight.

Wind heel refers to the heeling moment caused when the wind acts on the lateral area of the vessel above the waterline and causes the vessel to roll, or heel.

IV. Background and Purpose

The total number of persons permitted on a passenger vessel, inspected and certificated under 46 CFR Subchapters H, K or T, is limited by a number of different design factors, one of which is stability. Stability requirements include intact stability for almost all vessels, as well as subdivision and damage stability generally for any vessel carrying more than 49 passengers and all vessels over 65 feet in length. This NPRM is intended to clarify and update both intact stability and subdivision and damage stability regulations, primarily related to the carriage of passengers for hire, and to update the weight per person used for all vessels. The intent of this rulemaking is to ensure that each vessel operates without being overloaded.

The overall good safety record of the passenger vessel industry reflects safety factors inherent in the stability requirements applied to passenger vessels. Increasing the passenger weight to reflect current data will help ensure that the safety margins included in our regulations remain valid.

These safety margins operate in two ways. The first is through intact stability, which generally relates to the stability of a vessel in normal operation. The second is through subdivision and damage stability, which generally relates to the stability of a vessel in an emergency involving a flooded condition.

A vessel's stability information, including any restrictions on route and the number of passengers permitted, is provided to the vessel operator most often in the form of a stability letter issued by the Coast Guard's Marine Safety Center (MSC), and/or a Coast Guard Certificate of Inspection (COI) issued by the Officer in Charge, Marine Inspection (OCMI). When both are provided, restrictions on the COI govern. The COI is issued after the vessel's stability has been evaluated in one of two ways:

For vessels greater than 65 feet in length, stability is evaluated through detailed design calculations—submitted to the MSC—that produce the vessel's stability requirements. This process, which takes into account the assumed total weight of persons on board, is described in 46 CFR, subchapter S, parts 170 and 171.

Vessels not greater than 65 feet in length normally undergo a performance test conducted in the presence of the OCMI, instead of submitting design stability calculations to the MSC (46 CFR part 178). This performance test, which also takes into account the assumed total weight of persons on board, is either a simplified stability proof test (SST) or, if the vessel is a pontoon vessel, a pontoon simplified stability proof test (PSST). The SST is intended to evaluate monohull vessels, and the PSST is intended to evaluate pontoon vessels operating on protected waters. For ease of discussion, we will use the term SST in this preamble to describe any simplified stability proof test.

Vessels to which these tests do not apply may need to be evaluated through design calculations to show that they meet intact stability requirements. Alternately, a vessel might satisfy stability requirements by complying with a standard acceptable to the Commanding Officer, Marine Safety Center. Finally, simplified subdivision calculations may be necessary for some vessels not greater than 65 feet in length.

To arrive at a total assumed weight of persons on board for calculating stability, an assumed average weight per person is used. Section 178.330 of Title 46 of the CFR specifies that the assumed average weight per person is 160 pounds, except that vessels operating exclusively on protected waters and carrying a mix of men, women, and children may use an average weight of 140 pounds per person. These weights were established in the 1960s.

In a report issued in October 2004, the Centers for Disease Control and Prevention (CDC) concluded that the average weight of an individual in the United States has increased dramatically in the last 40 years, with the greatest increase seen in adults. (The report, *Advance Data From Vital Health Statistics Mean Body Weight, Height, and Body Mass Index, United States 1960–2002,* No. 347, October 27, 2004, is available in the docket.) This increase in passenger and crew weight can have an adverse effect on the stability of passenger vessels due to several factors, including increased vertical center of gravity, reduced freeboard, and increased passenger heeling moment.

On December 20, 2004, the National Transportation Safety Board (NTSB) issued Safety Recommendation M–04–04 (available in the docket), which included findings that the current 140 pound per person weight allowance for operations on protected waters does not reflect actual loading conditions. The NTSB recommended that the Coast Guard revise its guidance to OCMIs for determining the maximum passenger capacity of small passenger pontoon vessels either by: (1) Dividing the vessel's SST weight by 174 pounds per person; or (2) restricting the actual cumulative weight of passengers and crew to the vessel's SST weight. In correspondence to the NTSB dated April 7, 2005 (available in the docket), the Coast Guard concurred that the average weight per person used in SSTs needed to be updated, and noted that an internal Coast Guard study identified the same issue. That study, which is entitled *Study of Effects on Commercial Passenger Vessels Due to Weight Standards,* is available in the docket.

This notice of proposed rulemaking (NPRM) follows notices to the public, published in the **Federal Register** on April 26, 2006 (71 FR 24732) and November 2, 2006 (71 FR 64546), recommending voluntary interim measures for passenger vessels to follow while the Coast Guard studied the issue of increased passenger weight. In summary, those voluntary measures advised pontoon vessels and other small passenger vessels to (1) more stringently monitor wind and wave conditions prior to departure and (2) begin using 185 pounds as the new assumed average weight per person when calculating passenger capacity. A discussion of how 185 pounds was chosen is contained in the April 26, 2006 notice and in the discussion of § 170.090 in this preamble.

At last count, the Docket Management Facility received 108 comments from the public in response to those notices. They are posted for public view at *http://www.regulations.gov* under docket number USCG–2007–0030, and

can be viewed by following the directions in the ''Viewing comments and documents'' section of this preamble. We will respond to those comments, together with comments received in response to this NPRM, when we publish an effective rule.

Finally, this proposed rule is an opportunity to identify where corrections, clarifications, and updates need to be made to existing regulations. These proposed changes, which would include changes in international requirements, will be discussed in greater detail later in this preamble, under ''Corrections, Clarifications, and Updates.''

V. Discussion of Proposed Rule

For easier reference, we have divided this discussion into the following topics: A. Vessel Stability; B. Weight of Passengers and Crew; C. Notes on Pontoon Vessels; D. SOLAS and Resolution A.265; E. Corrections, Clarifications, and Updates; F. American Bureau of Shipping; and G. Discussion of Proposed Amendments by Section.

A. Vessel Stability

An increase in passenger and crew weight will typically have an adverse effect on vessel stability. Whether or not such additional weight would result in non-compliance of a vessel with applicable stability criteria depends upon the amount and location of the additional weight, the degree by which the vessel demonstrated compliance with the stability criteria previously, and which of the criteria was limiting, if any.

Historically, a margin of safety has been built into the requirements for both intact stability and subdivision and damage stability. The standards for intact stability criteria are generally designed to provide vessels with adequate ability to resist overturning heeling moments, such as those caused by wind or passenger weight shifting to one side. Standards for subdivision and damage stability are designed to address the worst case loading conditions and certain flooding scenarios that could occur as a result of accidental damage. Although intact stability and subdivision and damage stability standards address different stability risks, we believe that these two stability standards together are responsible in part for the good safety record of the passenger vessel industry. Therefore, we are proposing that intact stability and subdivision and damage stability requirements utilize an updated assumed average weight per person.

We also propose adding more specific requirements for a vessel owner or operator to show that the vessel meets intact stability and subdivision and damage stability standards, including provisions accounting for possible changes in vessel and weight per person. These requirements will improve a master's ability to meet stability criteria for the intended service and also avoid overloading the vessel.

Additionally, to help ensure that vessels maintain the intended safety levels after initial certification, we would clarify the requirement that stability information be checked at each annual inspection or COI renewal to confirm that it is still valid for the loading and service intended.

Finally, we propose requiring stability verification—including calculations—at least every ten years.

We propose detailing these requirements in new sections that would be added to each of the three subchapters that address the inspection of passenger vessels. The new sections, entitled ''Stability Verification,'' would be added at § 71.25–50 in subchapter H, § 115.505 in subchapter K, and § 176.505 in subchapter T (all of which are contained in chapter I, Title 46 of the CFR). Each new section would be comprised of paragraphs (a), (b), (c) and (d).

So that owners, operators, and OCMIs may clearly understand these requirements, how we intend to implement them, and the analyses upon which they are based, a discussion in three parts is given below:

''Part One—Explanation'' describes the purpose and intent behind each of the paragraphs—(a), (b), (c), and (d)—in the proposed new ''Stability Verification'' sections.

''Part Two—Analysis'' describes the process whereby the Coast Guard developed an assessment methodology for prioritizing the vessels that would require stability verification.

''Part Three—Assessment Methodology'' describes the methodology to be used by owners, operators, and OCMIs to, first, determine whether a change in the permitted number or distribution of passengers might be necessary and, second, to assess whether a vessel would be likely to require new stability testing or evaluation.

Part One—Explanation

Paragraph (a) of §§ 71.25–50, 115.505, and 176.505

Paragraph (a) would add, as the owner or operator's responsibility, two checks regarding the vessel's stability information. First, at each annual inspection and Certificate of Inspection (COI) renewal, the owner or operator would demonstrate that the stability information is still appropriate for the vessel's intended loading and service. This requirement would augment the confirmation by a Coast Guard marine inspector that a valid stability letter is properly posted aboard a vessel.

Second, the owner or operator would need to confirm that the total weight of gear and variable loads is still valid for the intended service. (The total weight of gear and variable loads, including the total weight of persons carried, is the basis for the stability letter and/or the COI.) The owner or operator would need to ensure that the master knows both the maximum total weight of persons and the average weight per person on which the total weight is based.

Currently, all passenger vessels are required to comply with a section in the ''Operations'' part of each inspection subchapter (§§ 78.17–22, 122.315, and 185.315 of this title) that requires a master to verify, prior to departure on every voyage, that the loaded vessel complies with all stability information, and that the stability information is being used properly to ensure that the vessel is not overloaded. Paragraph (a) would add a requirement that the owner or operator demonstrate the methods the master uses to do this. Such methods could include the competent reading of loading or draft marks, and must include the proper use of that information for complying with the draft and/or freeboard restrictions normally contained in the stability letters for these types of vessels.

If the stability information is no longer valid, a new stability letter would be needed. The new stability letter would contain revised operating restrictions that the master should follow to avoid overloading the vessel and to maintain compliance with stability requirements.

The following flowchart illustrates the stability confirmation process discussed above:

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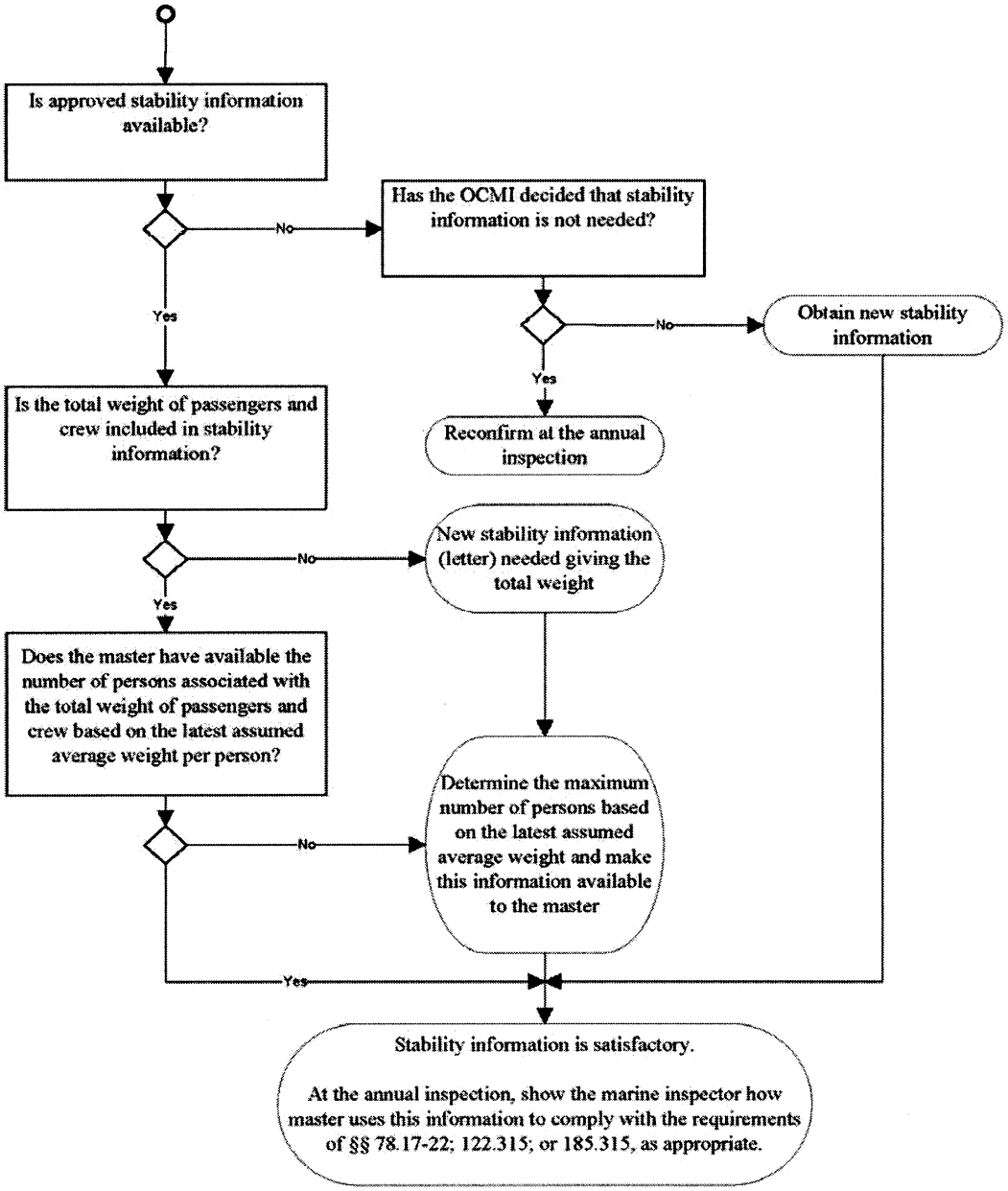
Stability Confirmation (at each annual inspection)



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Paragraph (b) of §§ 71.25–50, 115.505, and 176.505.

This paragraph would require a vessel's stability to be verified at 10 year intervals or when modifications are made to the vessel that could affect the vessel's ability to meet stability requirements. The 10 year ''clock'' would start whenever the last stability verification was conducted or stability letter was issued, or when a determination of sister vessel status was made (as permitted in part 170 of Subchapter S). The ''clock'' would be reset after each stability verification. For a vessel that would be issued a SOLAS Passenger Ship Safety Certificate (PSSC), the SOLAS requirement for a lightweight survey to be conducted at least once every 5 years would constitute a verification of the vessel's stability for the purposes of this paragraph.

In other words, paragraph (a) requires the owner or operator to make sure that the vessel master knows what the vessels' stability limits are, based on the most recent stability calculations. Paragraph (b) requires new calculations of the per-person weight, and then requires the use of that weight to verify—usually with calculations—that the vessel still meets applicable stability requirements.

Paragraph (c) of §§ 71.25–50, 115.505, and 176.505.

This paragraph would provide the minimum requirements for what the stability verification required by paragraph (b) would include. The requirements would vary depending on whether the vessel's stability compliance was governed by subchapter S or subchapter T of title 46 CFR. Subchapter S requires that detailed design calculations be submitted to the Marine Safety Center (MSC), as described in parts 170 and 171. This requirement also applies to all subchapter H and K vessels and some subchapter T vessels. However, a simplified test, either an SST or PSST, is performed for most subchapter T vessels, as described in part 178. In cases where a simplified test is neither feasible nor appropriate, a stability standard would be determined by the MSC.

Unless the OCMI permits the use of another value, the assumed average weight per person would be determined according to proposed paragraph 170.090(d) or 178.330(a)(4)(ii), whichever is applicable. The OCMI may permit another value when the owner or operator can show that another value more accurately represents the average weight of persons carried in service; for example when the vessel carries primarily children.

Using a total weight of persons based on this latest average weight per person (i.e., the new total test weight), the owner or operator would need to verify that the vessel meets applicable stability criteria. For subchapter S compliance, this would mean that calculations would need to be performed if the total weight of persons carried is greater than the total weight used in the previous stability verification. For vessels undergoing a simplified proof test, the owner or operator would need to either perform a new test using the new total test weight, or prove that the vessel could meet current applicable requirements using data from the most recently performed simplified test, if those data are valid.

For vessels meeting subchapter S requirements, the verification would also include conducting a deadweight survey to verify that the vessel's stability characteristics have not changed significantly, and that it remains in compliance with applicable stability criteria. (Coast Guard policy for what constitutes a significant change is contained in Marine Safety Center Technical Note (MTN) 04–95, *Lightship Change Determination; Weight-Moment Calculation* vs. *Deadweight Survey* vs. *Full Stability Test,* available in the docket.) If sufficient accuracy can be obtained for the stability verification prior to the deadweight survey, some relaxation in the deadweight survey requirements could be accepted by the MSC. For example, a greater number of tanks containing operating liquids could be kept at normal levels.

If the lightship characteristics have changed so that stability compliance is not assured under the existing stability information, a new stability analysis—together with associated loading calculations—would be needed, and a new stability letter would be issued.

When the passenger capacity of a vessel is limited by subdivision and/or damage stability considerations, the proposed increase in assumed average passenger weight may require a corresponding reduction in passenger capacity. For example, in a passenger vessel to which 46 CFR 179.220 is applicable, an increase in the assumed average weight per person could cause either a change in freeboard, resulting in a reduction in the permissible distance between watertight bulkheads (see 46 CFR 179.220(a)(2)), or a reduction in the permitted number of passengers in order to remain in compliance with existing subdivision and damage stability requirements. In a vessel to which subchapter S subdivision and damage stability requirements are applicable, increased passenger weight could cause the margin line to become submerged in the flooded condition, which regulations prohibit.

Owners of such vessels as those discussed above may seek to modify their vessels to maintain their current passenger count. When significant, such modifications may be determined by the Coast Guard to be ''major conversions.'' When a modification constitutes a major conversion, it is appropriate to bring the vessel into compliance with the latest safety standards where it is both reasonable and practicable to do so. The cognizant OCMI makes a determination on which areas of a vessel undergoing major conversion must be brought into compliance.

In all cases, for a passenger vessel that undergoes a major conversion or incurs changes that affect its stability, the required verification of both intact stability and subdivision and damage stability compliance would use the latest assumed average weight per person.

Paragraph (d) of §§ 71.25–50, 115.505, and 176.505.

This paragraph would permit the Coast Guard authority responsible for issuing the stability information to defer or dispense with stability verification based on the vessel's characteristics or the degree to which the vessel could be affected by increased weight per person or vessel weight. For vessels that are subject to subchapter S requirements, this authority is normally the Commanding Officer, Marine Safety Center; for vessels whose stability is based on a simplified stability test, this authority is normally the OCMI.

Analyses described under the ensuing ''Part Two—Verification Process'' of this preamble showed that some vessel types experience a negligible effect from increased passenger weight. These vessel types include sailing vessels, vessels that carry substantial cargo amounts compared to the passenger weight, vessels that have an established process to avoid overloading, and/or vessels that follow the voluntary measures for prudent operation contained in the **Federal Register** notice published on April 26, 2006 (71 FR 24732). A more detailed description of those vessels relatively unaffected by an increase in weight per person can be found in ''Part Three—Assessment Methodology.''

Part Two—Analysis

The Coast Guard sponsored an analysis of the impact of increased

weight per person on the U.S. inspected passenger vessel fleet. From the Marine Information for Safety and Law Enforcement (MISLE) database, we found that nearly 75 percent of the inspected U.S. flag passenger vessels are 65 feet in length or less. The stability of most of these vessels was based on the performance of a simplified stability test (SST), either for a monohull or a pontoon passenger vessel.

The analysis showed that the effect of increased passenger weight on vessels depended on factors not included in the MISLE database, such as the amount of freeboard and draft and whether the vessel is a flush deck or open boat type.

To supplement that study, additional stability analyses were performed on a number of monohull vessels that had undergone SSTs. By analyzing the SST results, conservative estimates of key parameters—such as the moment to heel 1 degree—can be made, that, in turn, can be used in an assessment methodology for intact stability verification.

These analyses were peer-reviewed by the Society of Naval Architects and Marine Engineers (SNAME) *Ad Hoc* Panel No. 15, which provided both a technical appraisal of the analyses and recommendations on how they could be used. Two of the panel's recommendations are associated with the proposed prioritizing process:

(1) The panel recommended the Coast Guard adopt a risk-based process that looks at relative changes to a vessel's stability characteristics and compares these relative changes to acceptable limits determined by the Coast Guard; and

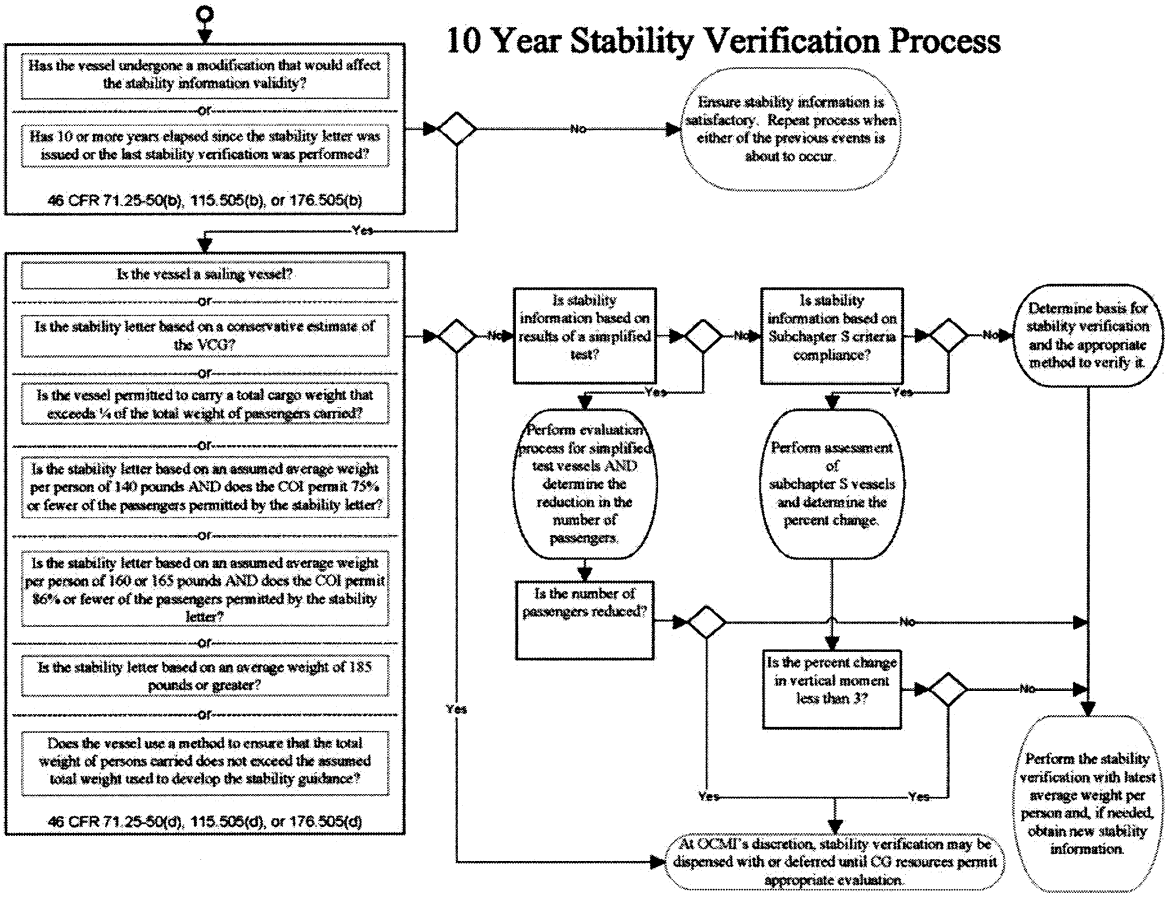
(2) The panel recommended the Coast Guard adopt a technical process in reviewing stability. That process would use the stability requirements the vessel is designed to meet to determine if the vessel has been adversely affected by an increase in passenger weight such that a new stability evaluation should be performed.

We agree with these recommendations. In addition, based on the analyses of the impact of increased passenger weight on the passenger vessel fleet, we developed an assessment methodology, detailed in ''Part Three—Assessment Methodology'' below, that reflects these recommendations.

As stated above, this proposed rule would require that a stability verification be performed within ten years of the date the last stability letter was issued or a previous stability verification was performed. Regardless of when the stability information was issued, however, all vessels must meet stability requirements using the latest assumed average weight per person immediately upon the effective date of this rule. Additionally, in all cases, when a vessel or its loading is modified in any way that alters its stability, a stability verification is required as soon as is practicable, using the latest assumed average weight per person.

Since a very large portion of inspected passenger vessels currently have stability letters that are more than 10 years old, we developed a process that allows owners, operators, and OCMIs to determine whether the stability verification should be conducted as soon as is practicable, deferred to a later date—most likely the next regular inspection—or perhaps dispensed with. This process would more evenly distribute demand for the Coast Guard resources that will be necessary to guide implementation of this proposed rule.

The following flowchart illustrates the prioritizing process, discussed in detail below:



Part Three—Assessment Methodology

The process by which an owner, operator, or OCMI would determine whether a vessel would need to reduce or redistribute passengers and whether it would need a new stability verification—and how soon—is laid out in detail below: First for vessels subject to the requirements of subchapter S, and second for vessels that undergo a simplified proof test.

However, there are several vessel categories for which no further assessment of passenger weight needs to be considered, with the exception that a new stability letter might be required. No immediate stability verification or change to passenger capacity is necessary if the vessel:

1. Is a sailing vessel;

2. Has a Certificate of Inspection (COI) that permits 86 percent (approximately equal to 160 pounds divided by 185 pounds) or fewer of the passengers permitted by the stability letter, and the assumed weight per person was 160 or 165 pounds;

3. Has a COI that permits 75 percent (approximately equal to 140 pounds divided by 185 pounds) or fewer of the passengers permitted by the stability letter, if operating on protected waters with a mix of men, women, and children, and the assumed weight per person was 140 pounds;

4. Is permitted to carry an amount of cargo, not including passengers, that exceeds the total weight of passengers carried; or

5. Ensures that the total weight of persons aboard the vessel does not exceed the assumed total weight of persons used to develop the stability information, which is equal to the total test weight.

Assessment of vessels subject to the requirements of subchapter S.

The SNAME *Ad Hoc* panel also proposed, and the Coast Guard, in turn, proposes a process for evaluating stability change in these vessels using the latest assumed average weight per person. By following the process below, the owner, operator, or OCMI could determine the urgency of each vessel's need for a re-evaluation of intact stability and prioritize the vessel accordingly. The data necessary for making the percent change and detailed loading calculations described below should be readily available, as § 78.17–22(b) requires that vessel masters have the capability to determine the vessel's draft, trim, and stability as necessary.

Evaluation process for a vessel subject to the requirements of subchapter S.

The following three assumptions were applied:

1. Wind heel requirements are more severe than passenger heel, and this doesn't change with an increase in weight per person. Experience has shown that passenger heel requirements in subchapter S rarely exceed wind heel requirements.

2. Each vessel meets stability requirements in its current condition, prior to assessing the effect of a per-person weight increase. Our assessment cannot take into account unauthorized changes to the vessel or its service.

3. A small amount of increase in weight or vertical center of gravity (VCG) will not adversely affect the stability of the vessel significantly.

This approach is taken from MTN 4–95 (available in the docket), which uses weight-moment calculations to assess the absolute and relative changes in displacement and centers of gravity (LCG and VCG). Those changes, in turn, can be compared to previously determined limits to evaluate the relative risk of adverse changes to the vessel's stability. To do this, a calculation is needed that relates the change in vertical weight moment caused by an increase in assumed weight per person ($VMOM_{chng}$) to the lightship vertical weight moment ($VMOM_{lightship}$):

$$\text{Percent Change} = VMOM_{chng}/VMOM_{lightship} \times 100$$

Where:

$VMOM_{chng} = (W_{paxnew} - W_{paxold}) \times (VCG_{pax})$

$VMOM_{lightship}$ = lightship weight × lightship VCG

VCG = vertical center of gravity above baseline

W_{paxnew} = the number of passengers multiplied by the latest assumed average weight per person

W_{paxold} = the number of passengers multiplied by the old assumed average weight per person (generally, either 160 or 165 pounds)

VCG_{pax} = the overall VCG of the passengers carried above the baseline

In making the calculations, consistent units must be used. In other words, if the lightship weight is given in long tons, W_{paxnew} and W_{paxold} must be computed in long tons; if the lightship VCG is in feet, VCG_{pax} must be in feet; if in meters, use meters.

MTN 4–95 allows up to a 2 percent change in lightship weight without verifying weight-moment calculations. Additionally, an OCMI may consider the difference in VCG of the vessel and the passengers. It should be noted that a percent change of the vertical moment of less than 3 provides a value of safety corresponding to the 2 percent displacement allowed in MTN 4–95. For these reasons, if the percent change in vertical moment computed by the methodology given above is less than 3, an OCMI could defer the stability verification to a later date, most likely the next regularly scheduled inspection. If the percent change is 3 or greater, and the vessel's most recent stability letter is more than 10 years old, detailed stability calculations should be performed to determine the degree to which, if any, an increase in total assumed passenger weight would affect the vessel's compliance with the applicable stability criteria.

Evaluation process for a vessel undergoing a monohull simplified stability proof test.

This process uses data obtained from the SST data form and the standards given in 46 CFR 178.330. If the data for the SST is not available, vessel measurements will be necessary to obtain the SST data or the moment to heel 1 degree ($MH1_{SST}$) must be estimated as described in the steps below:

1. Using the following equation, calculate the additional sinkage in inches (centimeters) due to the increased passenger weight:

$$\text{Sinkage} = (W_{paxnew} - W_{paxold})/W_{immersion}$$

Where:

$W_{immersion}$ = (Waterplane Area × Water Density/K) in pounds per inch (kilograms per centimeter) (this is the weight per unit immersion); K = 12 inches per foot (100 centimeters per meter)

W_{paxnew} = the number of passengers multiplied by the latest assumed average weight per person in pounds (kilograms)

W_{paxold} = the number of passengers multiplied by the old assumed average weight per person used in the SST (generally, either 140 or 160 pounds) in pounds (kilograms)

Waterplane Area = Length × Beam × Waterplane Coefficient in square feet (square meters)

Waterplane Coefficient = 0.7 for monohulls or 0.4 for multihulls, unless a more accurate value is known

Water Density = 64 pounds per cubic foot (1,025 kilograms per cubic meter) for salt water; 62.4 pounds per cubic foot (1,000 kilograms per cubic meter) for fresh water

2. Calculate the location of the new maximum allowable immersion mark ($i_{upright\text{-}new}$) above the upright load waterline by subtracting the sinkage calculated in step 1 above from the SST measured freeboard and applying the appropriate formula from 46 CFR 178.330(d). If the data for an SST is not available, the freeboard should be measured with the vessel in the condition specified in 46 CFR 178.330(a). (In summary, this is with the vessel complete in all respects, in a fully

loaded condition, and with all anticipated loads properly distributed.)

3. Calculate the existing SST moment to heel 1 degree ($MH1_{SST}$) as follows:

$MH1_{SST} = HM_{SST}/Theta_{SST}$

Where:

$Theta_{SST}$ = angle between upright SST waterline and actual SST immersion point (after weight movement), in degrees = inverse tangent ($2 \times (i_{heeled} - i_{upright}$/beam at the reference station)) (This is the actual heel angle caused by the heel moment applied in the SST.)

HM_{SST} = heeling moment applied during the SST in foot-pounds (meter-kilograms)

$i_{upright}$ = maximum allowable immersion determined from the upright freeboard before weight movement

i_{heeled} = actual remaining distance measured after the weight movement from the water surface to the position of $i_{upright}$ on the vessel

If the data for an SST is not available, the $MH1_{SST}$ can be estimated using the following equations:

For a vessel operating on exposed waters:

$MH1_{SST} = 3 \times ((L \times B^3)^2)/10^8 + (L \times B^3)/60 + 50$

For a vessel operating on partially protected waters:

$MH1_{SST} = 4 \times ((L \times B^3)^2)/10^8 + (L \times B^3)/125 + 200$

For a vessel operating on protected waters:

$MH1_{SST} = 4.5 \times ((L \times B^3)^2)/10^8 + (L \times B^3)/250 + 250$

Where,

L = Length in feet, and

B = Beam, in feet

4. Determine the new moment to heel 1 degree ($MH1_{new}$) in foot-pounds (meter-kilograms) with the increased passenger weight as follows:

$MH1_{new} = MH1_{SST} \times (T_{SST}/T_{new}) - VM_{new}/57.3$

Where:

T_{SST} = Estimated draft during SST in feet (meters), which may be calculated as the difference between the depth to the keel and the freeboard used in step 2

$T_{new} = T_{SST}$ + sinkage (calculated in step 1 above, and converted to feet (meters))

$VM_{new} = (W_{paxnew} - W_{paxold}) \times VCG_{pax}$ in foot-pounds (meter-kilograms)

VCG_{pax} = Overall vertical center of gravity (VCG) of the passengers carried

5. Calculate new passenger heeling moment (MP_{new}) in accordance with 46 CFR 178.330 using the latest assumed average weight per person. If the existing wind heeling moment (MW) exceeds MP_{new}, the new draft (T_{new}) should be used to calculate the new wind heeling moment (MW_{new}) in accordance with 46 CFR 178.330. The greatest of the new passenger or wind heeling moments (MP_{new} or MW_{new}) is divided by $MH1_{new}$ to determine the heel angle produced by the new heeling moment ($Theta_{new}$):

$Theta_{new}$ = (Max (MP_{new} or MW_{new}))/$MH1_{new}$

6. Using the heel angle ($Theta_{new}$) calculated in step 5, the height of the heeled waterline above the upright waterline ($i_{heeled\text{-}new}$) with the new heeling moment is determined:

$i_{heeled\text{-}new}$ = tangent ($Theta_{new}$) $\times 2 \times$ beam at the reference station

If $i_{heeled\text{-}new}$ is less than or equal to the height of the new maximum allowable immersion mark calculated in step 2 ($i_{upright\text{-}new}$), the vessel would not be affected by an increase in assumed weight per person. If the value exceeds ($i_{upright\text{-}new}$), the number of passengers should be reduced, or the passengers redistributed if the vessel has an upper deck, and steps 1 through 6 repeated until the immersion mark height ($i_{heeled\text{-}new}$) is equal to or below the maximum allowable ($i_{upright\text{-}new}$).

B. Weight of Passengers and Crew

New provisions on the assumed average weight per person would be added at §§ 170.090 and 178.330 and are discussed in detail at those sections of this preamble.

A new section, 171.045, would require each passenger vessel to which subchapter S intact stability requirements now apply to use the latest assumed average weight per person appropriate for the intended service. This requirement would apply immediately on the effective date of this rule, although stability verification would not be required until ten years after the most recent stability information was issued, as discussed under ''Vessel Stability'' above.

A new section, 178.215, would be added for vessels whose stability letter is based on the results of an SST or PSST. This section would require the owner or operator to provide the master with the total test weight, the latest assumed average weight per person, and the maximum number of persons permitted on board based on that weight.

C. Notes on Pontoon Vessels

The passenger capacity of pontoon vessels may not be affected if a process is followed on every voyage to ensure that the total weight of persons carried does not exceed the total test weight that was used to determine stability compliance. One example of such a process would be to weigh all the passengers as they board the vessel. The passenger capacity will be affected if such a process is not followed and the passenger weight used on the vessel's SST was based on either 140 or 160 pounds per person. If an SST was performed on the vessel using the procedures contained in the Small Passenger Vessels Simplified Stability Test Procedure for Pontoon Vessels on Protected Waters, the results of that test, if valid, may be used to determine the new capacity based on an assumed average weight that is appropriate for the intended service. In many cases, however, a new SST will need to be performed on pontoon passenger vessels. We propose adding the requirement in § 178.210(d) that a vessel that undergoes a PSST in accordance with § 178.340 must have a stability letter issued by the Marine Safety Center.

D. SOLAS and Resolution A.265

Sections 170.248 and 171.001 would be revised by adding requirements concerning new vessels, which will become effective when certain amendments to the International Convention for the Safety of Life at Sea (SOLAS) come into effect on January 1, 2009. Each new vessel issued a SOLAS Passenger Ship Safety Certificate (PSSC) or a SOLAS Cargo Ship Safety Construction Certificate would have to meet the requirements of SOLAS chapter II–1, in addition to meeting the requirements concerning watertight bulkhead doors in subpart H of part 170, and subdivision and damage stability requirements. For more information on these revisions, see the discussion of § 170.015 in this preamble.

The amendments to SOLAS chapter II–1 primarily involve the harmonization of subdivision and damage stability requirements for passenger and cargo vessels. IMO Resolution A.265(VIII) (hereafter A.265) was promulgated in 1973, and contains a probabilistic damage stability method that is an alternative set of requirements for passenger vessels instead of the traditional requirements contained in existing SOLAS regulations. This optional use of A.265 has been incorporated into U.S. regulations as ''Type III subdivision'', as an alternative to Type I subdivision. However, we are not aware of any U.S. flag vessel that has used Type III subdivision (A.265).

Since the SOLAS chapter II–1 amendments are effectively an update of A.265, there is no need to keep A.265 as an option. Accordingly, we propose removing §§ 170.135, 171.075, and 171.082, which address A.265 and Type III subdivision. While not replacing A.265, the SOLAS chapter II–1 amendments would be accepted as an equivalent to Type I subdivision.

Operating information associated with SOLAS chapter II–1 would be added in new § 170.140.

E. Corrections, Clarifications, and Updates

In the course of this rulemaking, we identified several regulations that need to be updated or corrected, and others that could benefit from clarification. While each of these proposed rule changes will be addressed more fully in the ensuing section-by-section discussion, a summary list of the affected sections—other than those discussed in ''SOLAS and Resolution A.265'' above, and ''American Bureau of Shipping'' below—is as follows: Subpart 71.75 (heading); 71.75–1; 71.75–5; 115.900; 115.910; 115.920; 115.930; 170.001; 170.015; 170.070; 170.100; 170.105; 170.135; 170.160; 170.165; Part 170, subpart E (heading); 170.170; 170.248; 170.270; 171.001; Part 171, subpart B (heading); 171.050; Part 171, subpart C (heading); 171.060; 171.065; 171.070; 172.020; 172.070; 174.007; 174.100; 174.360; 176.900; 176.910; 176.920; 176.930; 178.115; 178.230; 178.310; 178.320; 178.325; 179.212 and 179.220.

F. American Bureau of Shipping

As one of the updates of regulations cited above, we propose removing references to the American Bureau of Shipping (ABS) from §§ 170.075, 170.080, 170.085, 170.093, 170.100, 170.110, 170.120, 170.170, 170.173, 170.175, 170.180, 170.185, 170.190, and 170.235. Procedures that the ABS uses to perform reviews of certain documents on behalf of the Coast Guard are contained in Navigation and Vessel Inspection Circulars 10–82 and 3–97. Title 46 U.S.C. 3316 authorizes the Coast Guard to accept plan review, inspections, and examinations performed by ABS for compliance with Coast Guard rules and regulations. Delegation to a recognized classification society, including ABS, of authority to perform certain functions on behalf of Coast Guard is addressed in part 8 of 46 CFR.

G. Discussion of Proposed Amendments by Section

§ 71.25–50. Existing § 71.25–50 would be redesignated as § 71.25–95, and a new section on stability verification would be added as discussed in detail earlier in this preamble under ''Stability Verification.''

§ 71.50–1. The definition of ''drydock examination'' would be clarified to include the verification of the draft marks.

Subpart 71.75 (Heading) and §§ 71.75–1 and 71.75–5

The heading of this subpart and two of its sections would be revised to reflect that the SOLAS Passenger Ship Safety Certificate (PSSC) is issued under SOLAS 1974 provisions, that a vessel receiving a PSSC must comply with applicable SOLAS requirements, and that a vessel does not need to actually be engaged in international service but be certificated for international service to receive a PSSC.

§ 114.400. A definition of ''variable load'' would be added to this section. The term is used in § 115.112 for consideration of the number of persons and weight permitted on a vessel regulated by subchapter K.

The third subparagraph of the definition of ''length'' would be deleted because it refers only to use with the requirements of part 179, which are not applicable to vessels inspected under subchapter K.

§ 115.110. Existing provisions of paragraph (d) of this section list the factors OCMIs may consider when designating a permitted route. This list would be modified by removing a part of subparagraph (d)(3) and adding it as new subparagraph (d)(4) to explicitly call attention to the OCMI's prerogative to consider a vessel's use in weather conditions. This approach would emphasize the OCMI's authority to include operational limits on a COI.

It is not possible to accurately enumerate all combinations of safe environmental conditions on a given passenger vessel's COI. Instead, the Coast Guard has traditionally restricted small passenger vessels to operation in ''reasonable operating conditions.'' Defining reasonable operating conditions involves the judgment of a professional mariner having a certain degree of experience in the operation of a given size and type of vessel, and direct knowledge of the conditions to which the vessel is subject at any particular moment.

Limiting winds, speeds, and wave heights alone, however, cannot adequately define a safe operating envelope for any vessel. Many other conditions involving the vessel, its changing environment, and its response to that environment, must be constantly observed, monitored, interpreted, and responded to by the master in order to evaluate the advisability of embarking on a voyage, or continuing on a voyage when conditions progressively deteriorate. The master has the responsibility to make this determination and is bound to do so using his or her best skill and judgment.

This section, then, would emphasize the need for due diligence on the part of the master with respect to the weather, along with the other factors stipulated in this section, and would avoid unnecessary limits on the discretion of masters.

§ 115.112. This section would be revised to explicitly list the total weight of passengers, crew, and variable loads as factors an OCMI may consider when determining the total number of persons and total weight a vessel would be permitted to carry.

§ 115.505. This new section on stability verification would be added as discussed in detail earlier in this preamble, under ''Stability Verification.''

§ 115.610. Two sentences would be added to paragraph (a) that would add the verification of draft marks to the actions performed at a drydock examination, as well as to ensure that the stability information provided corresponds to the draft marks. A stability letter often includes an operating restriction that limits the maximum draft amidships. The vessel's draft marks (required by § 122.602), however, might refer to a point on the vessel that differs from that used in the stability letter (for example, the bottom of the rudder or propeller). So that the master can effectively verify that the loaded vessel complies with the stability letter's maximum draft restriction, draft or loading marks must be provided that allow the master to compare the actual vessel draft with the maximum draft restriction. If the maximum draft restriction in the stability letter does not correspond to the information obtained from draft mark readings, a new stability letter with a revised restriction and/or draft marks would be needed.

§§ 115.900, 115.910, 115.920, and 115.930. These sections would be revised to reflect current practice and policy: (1) a passenger vessel need not actually be on an international voyage to be issued a SOLAS Passenger Ship Safety Certificate (PSSC) but simply be certificated for international service; (2) the Commandant no longer issues the PSSC or a SOLAS Exemption Certificate but authorizes the local OCMI to do so.

§ 122.304. Forecasted visibility and weather conditions would be added as factors to which vessel masters should give special attention.

§ 122.315. This section would be augmented to emphasize the master's duty to avoid overloading the vessel by taking into account the weight of passengers, crew, and variable loads.

If appropriate for the vessel's operation, draft-sensing devices, loading

marks, or draft marks would satisfy this requirement. Other means might include: (1) Weighing passengers and crew individually, in groups, or in total; or (2) estimating the total weight of each passenger and including an appropriate margin.

Of course, if the number of passengers permitted by the COI is significantly less than the number permitted by the stability letter, a simple passenger count would be satisfactory.

§ 122.602. This section would be revised to require each vessel that complies with subchapter S requirements to have loading marks or draft marks. A stability letter or the stability information on a COI or load line certificate normally includes freeboard and draft restrictions on operation. While most vessels are already required to have markings of some kind, this section would be revised to require each vessel that complies with the requirements of subchapter S to have loading marks or draft marks to permit the master to verify compliance with the freeboard and draft restrictions.

Part 170, Subpart E. As one of the corrections cited above, this subpart heading would be revised from ''Subpart E—Weather Criteria'' to ''Subpart E—Intact Stability Criteria'' to more accurately describe the contents of the subpart.

§ 170.001. Paragraph (a) would be revised to clarify that the exception provision is intended to apply only to a vessel's contracted date. This exception was and is intended to allow retroactive application of new damage stability standards in § 171.080 and is not intended to be applied to vessels other than those that are ''inspected'' or that are required to meet a standard contained in subchapter S. A new subparagraph would also be added to paragraph (a) to clarify that certain uninspected vessels may need to comply with stability standards contained in subchapter S because they are issued a load line certificate or are required to meet a stability standard under subpart E of part 28 of this title.

§ 170.015. In December 2006, the International Maritime Organization (IMO) adopted Resolution MSC.216(82), which is contained in SOLAS chapter II–1, to harmonize subdivision and damage stability regulations for passenger and cargo ships. Accordingly, SOLAS chapter II–1 would be added to this central incorporation by reference section and referenced in §§ 170.140, and 170.248. The International Code on Intact Stability, 2008 (2008 IS Code), which would be referenced in § 170.165, would also be added to § 170.015.

§ 170.055. A definition of ''constructed'' similar to that used in SOLAS for ''ships constructed'' would be added to this section for clarification.

A definition of ''passenger fraction'' would also be added to this section. Passenger fraction is the ratio of total passenger weight to total displacement. This term would be used in revised § 171.050, which addresses intact stability requirements for a mechanically propelled or a nonself-propelled vessel. It would also be used in proposed § 171.052 concerning stability criteria for vessels of unusual proportion and form, specifically with regard to passenger distribution criteria.

For some small passenger vessels built of light materials, the passenger fraction can be as high as 50 percent. Such high passenger fractions were not envisioned when existing intact stability criteria were developed. Therefore, new requirements associated with passenger fractions greater than 15 percent would be included in proposed § 171.052.

§ 170.070. Paragraph (b) would be modified to clarify that subpart C of part 170 applies to a vessel when the subchapter under which it is inspected so directs.

§ 170.090. An erroneous reference to § 170.098 would be removed. Additionally, new provisions would be added governing the calculation of an assumed average weight per person and allowances for loads. These provisions replace the outdated assumed average weights currently contained in § 178.330.

The Coast Guard concurred with the NTSB's March 7, 2006 recommendation (Recommendation M–06–05, available in the docket) to require that passenger capacity of domestic passenger vessels be calculated based on a statistically representative average passenger weight standard that is periodically updated. This section of the proposed rule sets forth the formula used to calculate the average weight per person published in the **Federal Register** on April 26, 2006, which resulted in a figure of 185 pounds. The formula relies on the most recent mean body weight data available from the National Health and Nutrition Examination Survey (NHANES), which is expected to be released periodically by the National Center of Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). As the U.S. population weight data is updated periodically by the CDC, the formula proposed in this rule would compute the latest, statistically representative, assumed average weight per person which will be used to evaluate the stability of passenger vessels.

This notice and comment rulemaking provides the public the opportunity to comment on the formula and calculation methodology the Coast Guard proposes to use to determine the assumed average weight per person, as well as subsequent adjustments to the average weight per person using the same formula.

When the CDC/NHANES releases an update regarding the average weight of adults in the United States, the Coast Guard, without further rulemaking, would publish a notice in the **Federal Register** of the availability of that data and the associated calculation of the average weight per person, according to the proposed formula. Vessel owner/operators and masters of passenger vessels would be expected to take this new weight into consideration 60 days after the notice would be published, and load their vessels accordingly.

The CDC NHANES program is a widely accepted and authoritative source for weight data on the U.S. population. The 2004 CDC NHANES report on surveys conducted in the United States between 1960 and 2002 stated that ''on average, both men and women gained more than 24 pounds between the 1960s and 2002.'' According to this report, the mean weight of children of all ages also increased substantially between 1963 and 2002. Teenage boys and girls aged 12–17 increased 15 and 12 pounds, respectively, to mean weights of 141 and 130 pounds, respectively, between the 1960s and 2002. (See CDC *Advance Data,* Number 347, dated October 27, 2004, available at: *http://www.cdc.gov/nchs/products/pubs/pubd/ad/ad.htm.*)

For a 50/50 male/female mix and for adults between 20 and 74 years old, an average weight of 177.7 pounds without clothing was calculated from the data released in the NHANES report. An average weight of approximately 185 pounds is obtained when the most current CDC average weight of 177.7 pounds is added to the Federal Aviation Administration (FAA) average clothing weight of 7.5 pounds. (See FAA Advisory Circular (AC) 120–27E, *Aircraft Weight and Balance Control,* dated June 10, 2005, paragraph 201 (superseding FAA AC 120–27D), available in the docket). Approximately the same weight is obtained when the CDC average adult weight gain of 24 pounds is added to the 160-pound average established in the 1960s.

The accuracy of this result is further confirmed by the weights recommended by government authorities in Canada and New Zealand. A 2003 New Zealand Civil Aviation Authority survey of passenger weights reported an average

weight without carry-on bags or personal effects of 176.8 pounds. Transport Canada, Canada's Federal transportation agency, recommends assuming an average weight of 182.5 pounds per person in summer and 188.5 pounds in winter for small aircraft. Transport Canada's weights included an allowance for clothing, but not luggage. (These documents are available in the docket.)

The Coast Guard also considered a report by the Coast Guard Passenger Weight Working Group. The report, dated May 19, 2005, available in the docket (and mentioned earlier in this preamble under ''Background and Purpose''), used an average passenger weight of 190 pounds to assess the potential impacts of regulatory changes. This average passenger weight was based on the FAA's use in their Advisory Circular AC 120–27D of an average winter passenger weight of 189 pounds, not including carry-on bags. It was noted in the report to be conservative. The current FAA Advisory Circular, AC 120–27E, also uses an average winter passenger weight of 189 pounds without carry-on bags, and includes allowances of 10 pounds each for clothing and personal items. (See AC 120–27E, paragraphs 201 and 205, and Tables 2–1 and 2–2.)

The FAA arrived at the standard average passenger weights used in AC 120–27E after performing certain mathematical calculations using the CDC's NHANES data, rather than relying on the average weights published by the CDC in *Advance Data* Number 347. (See AC 120–27E, Appendix 2). However, to achieve safe vessel stability standards without restricting passenger vessel operators unnecessarily, the most accurate weight data available must be subjected to sound naval architecture analysis, rather than simply mimicking the product of calculations unrelated to vessel stability. Reliance on CDC data to update pertinent vessel stability regulations now and in the future satisfies the need for accurate weight information.

Additional Considerations of the Assumed Average Weight per Person for Vessels on Protected Waters

The current Coast Guard regulation associated with the performance of a simplified stability test (SST) permits the weight of one person to be considered as 63.5 kilograms (140 pounds) if the vessel operates exclusively on protected waters and the passenger load consists of men, women, and children (46 CFR 178.330(a)(4)(ii)). Experience has shown that many vessels whose stability is based on this passenger weight standard do operate with such a mix of passengers. Many of these vessels, however, occasionally carry a passenger load consisting predominantly of adults, and some vessels do so most of the time.

We propose removing the weight standard currently used in § 178.330 and, instead, adding provisions to § 170.090 that would utilize data from the most recent NHANES survey to arrive at a more accurate average weight per person. However, the proposed rule would be unnecessarily inflexible if it did not consider vessels that normally operate with a mix of men, women, and children on protected waters. To address cases where the owners of such vessels can effectively manage vessel stability to ensure that their vessels are not overloaded, the proposed rule permits the OCMI to agree, in writing, to the use of other values. For example, excursion vessels whose businesses cater to families or child-oriented themes may be able to show that they will carry a high percentage of children, who weigh far less than the assumed average weight per person of adults.

As discussed above, fundamental differences between the marine and aviation fleets make a broad and uncritical adoption of FAA passenger weight analysis unrealistic. With the OCMI's written agreement, however, if feasible and appropriate for their service, some vessels may be able to utilize FAA methods to determine the weight of passengers and bags. Those methods are described in FAA AC 120–27E.

Another possible solution would allow the vessel operator to manage stability by weighing each passenger or all passengers together prior to embarkation; or asking each passenger his or her weight, adding an appropriate margin for clothing or understated weight, and verifying that the passenger weight tally does not exceed the total permitted passenger weight.

§ 170.105. This section would be revised to reflect the correct application of subchapter T vessels.

§ 170.135. We propose removing this section concerning Type III subdivision in its entirety. See the discussion earlier in this preamble under ''SOLAS and Resolution A.265.''

§ 170.140. See the discussion of § 170.015 in this preamble.

§ 170.160. To correct the erroneous reference to § 178.330, paragraph (c)(3) would be revised to indicate that performance of any of the simplified stability tests described in part 178 would be an acceptable alternative to the demonstration of compliance with the standards of subpart E. Paragraph (d) would be added so that vessels complying with applicable provisions of the International Code on Intact Stability, 2008 (2008 IS Code), enunciated in new § 170.165, would be considered equivalent to complying with the requirements of §§ 170.170 and 170.173.

§ 170.165. This section would be added to implement the Introduction and Part A of the 2008 IS Code for vessels certificated for international service. Paragraph (a) of this section would codify the requirements that are expected to be adopted as amendments to both the 1988 Load Line Protocol and SOLAS for vessels to which either of these IMO agreements apply.

Paragraph (b) would make compliance with the 2008 IS Code an alternative for vessels to which paragraph (a) does not apply.

§ 170.170. This section would be revised to correct a deficiency in the current regulations. Section 170.170 contains what are commonly referred to as ''wind heel'' requirements for intact stability. The formulation for a minimum required metacentric height (GM) currently contained in this section facilitated easy evaluation and verification that the vessel does not exceed the limiting angle of 14 degrees, or one-half the freeboard to the deck edge, without the more involved process of calculating righting and heeling arm curves to determine the heel angle. While this formulation reflects a common simplification that was and is appropriate for conventional ships—and is simple to compute—there exist some unusual combinations of beam, freeboard, wind profile area, and metacentric height for which the existing equation is not appropriate.

For example, calculations submitted to the Marine Safety Center (MSC) for a vessel with low freeboard and a high wind profile area a few years ago showed compliance with the minimum metacentric height requirement, but the MSC's verifying calculations showed the vessel would capsize when the required wind heeling moment was applied. The reason for this discrepancy was that the angle of deck edge submergence was less than 5 degrees, which caused the maximum righting arm to occur at such a low angle that the required righting moment to maintain equilibrium could not be obtained.

The proposed change would correct this deficiency by requiring the calculation of righting arm curves. This change would implement the intent of this regulation, which is to restrict the angle of heel caused by wind pressure that varies according to stability route.

§ 170.248. Paragraph (a) of this section would be revised and a new paragraph would be added to invoke SOLAS watertight bulkhead door requirements on vessels issued a SOLAS safety certificate in addition to the specific requirements already contained in part 170.

§ 170.270. This section would be revised to update the ASTM standards incorporated by reference.

Part 171 (subpart headings). Subparts B and C would be re-titled ''Intact stability'' and ''Subdivision and damage stability'', respectively, to more accurately describe the contents of those subparts.

§ 171.001. This section would be modified to require a passenger vessel certificated for international service and constructed on or after January 1, 2009, to comply with the newly revised regulations of SOLAS chapter II–1. For the purposes of this section, those SOLAS requirements are equivalent to the requirements of part 171 when applied to such vessels. This section would also be modified to reflect the current application of part 171 to certain vessels inspected under subchapter T.

§ 171.012. This new section would be added to incorporate by reference into part 171 SOLAS chapter II–1 and the 2008 IS Code. SOLAS chapter II–1 would be referenced in § 171.001 and the 2008 IS Code in § 171.050.

§ 171.045. See the discussion of this section under ''Weight of Passengers and Crew'' earlier in this preamble.

§ 171.050. The heading of this section would be revised to more accurately describe the contents of the section as relating specifically to passenger heel. The revised section would also establish the minimum standard for intact stability of a mechanically propelled or nonself-propelled vessel as an angle of heel not greater than 14 degrees, or the angle of heel at which the deck edge is first submerged, whichever is less. Angle of heel is more accurate than the current standard, which relies upon a simplified calculation of metacentric height. Moreover, the current standard was intended to approximate angle of heel, and was adopted because angle of heel calculations were considered in the past to be too onerous for purposes of this regulation. With current computing capabilities, however, use of the more accurate standard would be appropriate. Additionally, paragraph (c) would be added so that compliance with the requirements in the 2008 IS Code for passenger ships would be considered equivalent to complying with the provisions of paragraph (a) governing passenger heeling.

§ 171.052. Technological improvements in vessel design and construction have resulted in some vessels that weigh significantly less than their more conventional predecessors. Intact stability criteria for passenger vessels did not consider vessels of light construction, for which the total weight of passengers and their effects could constitute 50 percent or more of the total displacement weight. Studies of passenger distribution have been performed that show that the standard currently contained in § 170.173 does not provide a margin of safety for vessels of light construction to the same degree as for those vessels for which the standard was developed.

Accordingly, this new section would be added to specify stability requirements for vessels of unusual proportion and form in order to withstand certain operating conditions, and also to take into account variations in passenger loading. The addition of passenger distribution criteria will bring the stability analysis of domestic vessels in line with the methodology employed by the 2008 IS Code, and account for a wide variety of hull forms not envisioned by the current regulations. See the discussion of ''passenger fraction'' at § 170.055.

§ 171.060. We propose removing the text concerning Type III subdivision. See the discussion earlier in this preamble under ''SOLAS and Resolution A.265.''

§ 171.065. The second equation in this section is erroneous, and would be corrected. When subchapter S regulations were originally published in 1983, the equation was correct; however, a printing error—changing the term P1 to P—was introduced in subsequent editions of the CFR. We propose taking this opportunity to correct the error.

§ 171.070. The current regulation is silent concerning the minimum spacing of watertight bulkheads for vessels less than 143 feet in length that make international voyages. These vessels are normally required to meet SOLAS requirements for such spacing, which are the same as for vessels that are 143 feet or more in length. We propose taking this opportunity to correct this omission.

§ 171.075. We propose removing this section concerning Type III subdivision in its entirety. See the discussion earlier in this preamble under ''SOLAS and Resolution A.265.''

§ 171.080. This section, which specifies damage stability standards for vessels with Type I or Type II subdivision, would be revised by removing ''75 kilograms'' as an assumed average passenger weight, and referring to § 170.090 instead, which uses the most current NHANES data.

§ 171.082. We propose removing this section—regarding Type III subdivision—in its entirety. See the discussion earlier in this preamble under ''SOLAS and Resolution A.265.''

§ 172.020. This section would be revised to include MARPOL 73/78 as a standard to be incorporated by reference.

§ 172.070. This section would be revised to clarify the date after which vessels must comply with the intact stability requirements of the International Convention for the Prevention of Pollution from Ships, 1973, (as amended by the Protocol of 1978 (MARPOL 73/78) Annex I). The revised section would also reflect the renumbering of regulations that occurred in MARPOL 73/78.

§ 174.007. This new section would be added to incorporate by reference SOLAS chapter II–1. SOLAS chapter II–1 would be referenced in § 174.360 for the reasons discussed below.

§ 174.100. This section would be revised to update the ASTM standards incorporated by reference.

§ 174.360. We are taking the opportunity to update this section, as cited above. The amendments to SOLAS chapter II–1 discussed earlier in this preamble under ''SOLAS and Resolution A.265'' also apply to dry cargo ships constructed on or after January 1, 2009. Since § 174.360 applies to dry cargo ships built before this date as well, we propose updating this section to properly address the requirements that are applicable to dry cargo ships constructed both before and after January 1, 2009. See the discussion at § 170.015 earlier in this preamble.

§ 175.400. Definitions of ''variable load'' and ''total test weight'' would be added to this section. Both terms are used in § 176.112 for consideration of the number of persons and weight permitted on a vessel inspected under subchapter T, and in the simplified stability proof test set out in § 178.330.

§ 176.110. As discussed in § 115.110 of this preamble, this section lists the factors OCMIs may consider when designating a permitted route.

§ 176.112. This section would be revised to explicitly list the total weight of passengers, crew, and variable loads as factors an OCMI may consider when determining the total number of persons and total weight a vessel would be permitted to carry.

§ 176.505. This new section on stability verification would be added as discussed in detail earlier in this preamble under ''Stability Verification.''

§ 176.610. Two sentences would be added to paragraph (a) that would add the verification of draft marks to the actions performed at a drydock examination, as well as make sure that the stability information provided corresponds to the draft marks provided. See the discussion of § 115.610 earlier in this preamble.

§ 176.900, 176.910, 176.920, and 176.930. See the discussion of §§ 115.900, 115.910, 115.920, and 115.930 in this preamble, where we discuss proposed revisions to reflect current practice and policy regarding SOLAS certificates.

§ 178.115. This section would be modified to allow application of subpart B to existing vessels.

§ 178.210. Paragraphs (a), (b) and (c) of this section would be revised to clarify what stability information is necessary for a vessel to meet intact stability standards, and a new paragraph (d) would add the requirement for an MSC-issued stability letter, as discussed in ''Notes on Pontoon Vessels'' above.

§ 178.215. See the discussion earlier in this preamble under ''Weight of Passengers and Crew.''

§ 178.230. Paragraph (b) of this section would be revised, and a new paragraph (c) added, to expand the information required of vessels showing compliance with subchapter S, including information required in part 170 of that subchapter.

§ 178.310. This section would be revised to clarify the intact stability requirements for vessels subject to subchapter S, as well as those that can use subchapter T requirements. In addition, we would add the option of another requirement as stipulated by the Commanding Officer, Marine Safety Center. Finally, the existing option to use an SST for vessels carrying not more than 150 passengers would be removed, as the general applicability of subchapter T (see 46 CFR 175.100) already excludes vessels carrying more than 150 passengers. A figure would be added to assist users in understanding these requirements.

§ 178.320. We propose clarifying in this section that subchapter S stability requirements, or requirements determined by the Commanding Officer, Marine Safety Center, apply to all inspected passenger vessels that are not explicitly described and excepted in § 178.320. For vessels that are described in this section, the performance of a simplified stability test is an option. However, for vessels carrying 49 passengers or fewer, the cognizant OCMI has the authority to require compliance with subchapter S standards, or to apply another standard in lieu of the simplified stability test. Specifically, we propose revising redesignated paragraph (b) to clarify that a vessel whose stability cannot be adequately assessed by other means must be shown by design calculations to meet the applicable intact stability requirements of subchapter S.

For readability, we propose moving the explanation of the simplified stability test to the beginning of the section rather than the end. For consistency, we propose moving from § 178.325 the list of restrictions for a monohull sailing vessel undergoing a simplified stability test to this section. Further, we propose adding the option of an SST for certain flush-deck non-sailing catamarans.

We also propose adding to § 178.320 restrictions on the application of a pontoon simplified stability proof test (PSST). These proposed restrictions on the application of the PSST are based in part on a study of twin hull pontoon passenger vessels, entitled *Study on the U.S. Domestic Intact Stability and Subdivision Requirements for Twin Hull Pontoon Passenger Boats Less Than 65 Feet in Length*, which is available in the docket as indicated in the **ADDRESSES** section. A table would be added to clarify applicability requirements.

§ 178.325. For consistency, we propose revising this section to move the list of restrictions for a monohull sailing vessel undergoing an SST to § 178.320. In addition, we would clarify that the performance of a simplified stability proof test is optional, as provided in § 178.320.

§ 178.330. New provisions would be added governing the assumed average weight per person to be used as well as allowances for loads on small passenger vessels. The latest assumed average weight per person would replace the outdated assumed average weights previously contained in § 178.330, and would refer to § 170.090, which would be based on the latest weight data available from the National Center for Health Statistics' National Health and Nutrition Examination Survey (NHANES). For further information on the basis for these revisions, see the discussion of § 170.090 in this preamble.

§ 178.340. This section would be revised to codify existing policy on pontoon vessel intact stability, clarify those requirements, and improve consistency of application. These revisions include a requirement that when a PSST is performed, each fuel, water, and sewage tank be full, and that the simulated load of passengers, crew, and other loads be distributed to provide normal operating trim. Additionally, procedural changes to improve the accuracy of the test would be made based on recent detailed analyses of multihull stability characteristics that were not previously available. The organization of the revised section would align with that of § 178.330, which concerns the SST generally for monohull vessels.

§ 179.15. This new section would be added to incorporate by reference SOLAS chapter II–1. SOLAS chapter II–1 would be referenced in § 179.212 for the reasons discussed below.

§ 179.212. This section has been revised to clarify that the ''simplified'' subdivision requirements of part 179 can only be used in conjunction with the ''simplified'' intact stability requirements of part 178, and vice versa. A new paragraph would also be added to this section to require a passenger vessel constructed on or after January 1, 2009, intended to make international voyages, and issued a SOLAS PSSC, to meet applicable requirements of SOLAS chapter II–1 instead of the subdivision and damage stability requirements of this section. For the purposes of this section, those SOLAS requirements are equivalent to the requirements of this part when applied to such vessels. For additional information, please see the discussion in § 171.001 of this preamble.

§ 179.220. To enhance reliability and consistency, we propose adding a paragraph requiring that the calculations specified by this section be submitted to the Marine Safety Center for review and approval. In addition, we are taking this opportunity to correct the use of confusing, repeated symbols in paragraph (a).

§ 185.304. Forecasted visibility and weather conditions would be added as factors to which vessel masters should give special attention. A new paragraph would also be added requiring masters of vessels not greater than 65 feet in length to have means available to monitor marine broadcasts.

§ 185.315. A new paragraph would be added to this section to emphasize the master's duty to avoid overloading the vessel by taking into account the weight of passengers, crew, and variable loads. Please see the detailed discussion in § 122.315 of this preamble regarding satisfactory means by which the master may accomplish this.

§ 185.602. This section would be revised to require each vessel that complies with subchapter S requirements to have loading marks or draft marks. A stability letter or stability information placed on a COI or load line certificate normally includes freeboard and draft restrictions on operation.

While a very high proportion of vessels already have marks, every vessel whose stability approval was issued in accordance with subchapter S should have loading or draft marks to permit the master to verify compliance with the freeboard and draft restrictions. See the discussion of § 115.602 earlier in this preamble.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 170.015, 171.012, 172.020, 174.007 and 179.15. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in §§ 170.015, 171.012, 172.020, 174.007 and 179.15.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporations by reference.

VII. Regulatory Analyses

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

A. 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 (OMB) has not reviewed it under that Order. Nevertheless, we have prepared a Preliminary Regulatory Analysis of potential costs and benefits which is available in the docket where indicated under the **ADDRESSES** section of this preamble. A summary of the analysis follows:

The Coast Guard proposes to amend its regulations governing stability requirements and the maximum number of passengers that may safely be permitted on board a vessel inspected and certificated under 46 CFR subchapters H, K or T. To calculate vessel stability and the maximum number of persons allowed on board, Coast Guard regulations currently use an average weight per person of either 160 or 140 pounds, depending on vessel route and mix of passengers. These figures were set in the 1960s. In 2004, however, the Centers for Disease Control and Prevention (CDC) released findings that the average mean body weight for men and women had increased by 24 pounds since the 1960s. Therefore, this notice of proposed rulemaking (NPRM) is intended to update the average weight per person used in both intact stability and subdivision and damage stability compliance for vessels, and also in calculating the maximum number of passengers permitted on board.

Based on Coast Guard data, we estimate this proposed rule would affect 6,073 inspected passenger vessels. These vessels would all be required to have updated stability letters. Of these vessels, 1,140 would require both a new stability test and a reduction in maximum passenger load to obtain an updated stability letter. Additionally, 3,542 vessels would require either a new stability test or a stability recertification, but would not need to reduce maximum passenger load. Finally, 1,391 vessels would require no additional stability test or recertification and no reduction in passenger load in order to receive an updated stability letter.

We estimate the non-discounted first-year and recurring costs to be about $10 million and $2.5 million, respectively. We estimate the discounted ten-year cost of this rulemaking to be $24.6 million at a seven percent discount rate and $28.7 million at a three percent discount rate. The annualized costs over the ten-year period are $3.5 million at a seven percent discount rate and $3.36 million at a three percent discount rate.

B. 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.

An Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the rule on small entities is discussed below. Under section 603 of the Regulatory Flexibility Act, an IRFA must describe the impact of the proposed rule on small entities and contain the following:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and legal basis for, the proposed rule;
3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and,
6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

We have discussed many of these issues at length in other sections of the NPRM. We refer the reader to the applicable sections of the NPRM for more detail. We have prepared an IRFA of the potential impacts of the proposed rule on small entities which is available in the docket where indicated under the **ADDRESSES** section of this preamble. A summary of the IRFA follows:

Number of Small Entities Affected

Entities that would be affected by the proposed rule are owners and operators of U.S.-inspected, U.S. flag passenger vessels. To determine which of the affected entities are small, we used public and proprietary databases to determine employee size and annual revenues of the entities and the North American Industry Classification System (NAICS) codes to classify the entities. We then applied the United States Small Business Administration (SBA) criteria for classifying small businesses to the associated NAICS code for a particular entity, and were able to determine whether the entity would be classified as small.

Of the affected population of approximately 6,073 vessels (owned by 5,760 U.S. entities) that would comply with this proposed rule, we took a sample of 156 small companies from the total population of companies that potentially own or operate these vessels. We researched approximately 900 companies in order to obtain the 156 small businesses that were required to meet our confidence level. We excluded companies that did not have the requisite data to allow us to make a determination on whether a company was small.

Types of Entities Affected

We classified small businesses by the NAICS code for those businesses that had known company information, and determined whether a business was small by using the SBA size standards matched to the NAICS codes. We analyzed businesses with 26 different

NAICS codes and found that about 75 percent of passenger vessels were owned by companies who operate recreational and sightseeing businesses. Of the small businesses that we analyzed, 38 percent are classified as ''scenic and sightseeing transportation'' companies. ''Recreation and amusement'' companies represent about 11 percent of the companies. ''Travel agencies'' and ''tour operators'' represent 11 percent. The remaining 25 percent of the small businesses that we analyzed are comprised of 21 different NAICS codes. The largest percent of the remaining 25 percent were ''inland water transportation'' and ''boat dealers.''

To estimate the impact on small businesses, we identified the vessels operated by each company. These vessels were assessed by naval architects as to the likely impact of an updated average weight per person on their stability calculations. We then categorized the vessels into cost categories similar to those in Table 1 which are further detailed in the Preliminary Regulatory Analysis and the Initial Regulatory Flexibility Analysis (available in the docket).

IMPACT OF UPDATED PASSENGER WEIGHT STANDARD ON SMALL BUSINESSES BY CATEGORY

Category	Description of impact	No. of vessels	Passenger reduction
1	Vessels that would incur a reduction in passenger capacity, based on new stability tests or calculations, or based on existing stability test data, and would incur recertification costs for intact and subdivision and damage stability.	34	315
2 & 3	Vessels that would not incur a reduction in passenger capacity, but would have restrictions on the number of passengers on higher decks based on new or existing stability test data or calculations, and would incur recertification costs, and vessels that would not incur a reduction in passenger capacity, but would require new stability information to be issued based on new or existing stability tests or calculations, and would incur recertification costs.	91	0
4	Vessels that would not incur a reduction in passenger capacity, based on metrics that show that the effect of increased assumed passenger weight would be sufficiently small that no recertification action would be necessary.	31	0
Totals		156	315

We estimated the cost impact on annual revenue for each entity by category of vessel cost. The analysis shows that 81 percent of affected small entities would have an impact of less than one percent of estimated revenue and 19 percent of affected small entities would have an impact of one to two percent of revenue.

At this time, the Coast Guard is seeking comments on whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Other Federal Rules

The requirements in this proposed rule do not overlap with provisions of any other agency.

Regulatory Alternatives

The goal of this NPRM is to establish the appropriate measures when conducting stability tests. The no-action alternative is to ignore the increase in weight of the average American and to calculate stability with inaccurate data.

A possible alternative is to allow the OCMI to deal with each individual vessel on a case-by-case basis without any national standard. The likely result would be a non-uniform weight standard, with vessels that change location failing to meet local requirements.

We address the projected reporting and recordkeeping requirements as well as the type and professional skills necessary for the preparation of reports and records in the cost analysis and Paperwork Reduction Act sections of this report.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. William Peters, U.S. Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), telephone 202–372–1371. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), a ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule would call for revisions of two collections of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520). 46 CFR 78.121, 115.306, 170.120, and 176.306 require the collection of information. The updated average weight per person would require revisions of the existing OMB-approved collections of information.

OMB Control Number: 1625–0064.

Title: Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR Subchapter S.

Summary of the Collection of Information: This collection of information requires owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program. The collection also requires the reporting of certain information.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

Proposed Use of Information: The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

Description of the Respondents: Owners, operators, and/or masters of passenger vessels.

Burden of Response: The burden of this proposed rule for this collection of information is the provision of documentation of stability analysis and posting of a stability letter. This collection of information applies to all vessels that comply with subchapter S. This includes vessels inspected under 46 CFR subchapter H or K and some vessels inspected under subchapter T. We estimate 1,874 vessels comply with subchapter S. During this period, we estimate the total number of respondents is 1,388.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 4,539 hours. The revision includes a one-time annual burden that would be approximately 5,791 hours. The total annual burden is estimated to be 10,330.

OMB Control Number: 1625–0057.

Title: Small Passenger Vessels—Title 46 Subchapters K and T.

Summary of the Collection of Information: This collection of information requires information necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

Proposed Use of Information: The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

Description of Respondents: Owners, operators, and/or masters of small passenger vessels.

Burden of Response: The burden of this proposed rule for this collection of information is the posting of a stability letter, as required by 46 CFR 115.306 (subchapter K) or 46 CFR 176.306 (subchapter T). Of the 5,487 respondents, there are 3,669 vessels inspected under 46 CFR subchapters K or T that would need to post a new stability letter.

Estimate of Total Annual Burden: The existing OMB-approved annual burden, related to the posting of a stability letter, is 11 hours. The revision includes a one-time increase in the annual burden of approximately 305 hours to post the new stability letter.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

E. 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.

The proposed rule would be issued under authority conferred on the Coast Guard by Chapter 33 of Title 46 United States Code (U.S.C.). Chapter 33 of Title 46, U.S.C. describes the regimen of regulation for vessels ''subject to inspection'' by the U.S. Coast Guard. Vessels ''subject to inspection'' is a term of art developed by Congress. It refers to various types of vessels listed in 46 U.S.C. 3301 subject to a comprehensive, permissive regimen of Federal regulation. By contrast, ''uninspected vessels,'' such as most commercial fishing vessels and recreational vessels, are still subject to Coast Guard regulation, but under a much less comprehensive and prescriptive scheme of Federal regulation. The U.S. Supreme Court has long recognized the preemptive impact of Federal regulations in the field of inspected vessels. See, for example, *Kelly* v. *Washington ex rel Foss*, 302 U.S. 1 (1937) and Locke, 529 U.S. 113–116. Therefore, Coast Guard regulations issued under the authority of 46 U.S.C. 3306 in the areas of design, construction, alteration, repair, operation, superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, accommodations for passengers and crew, sailing school instructors, sailing school students, lifesaving equipment and its use, firefighting equipment, its use and precautionary measures to guard against fire, inspections and tests related to these areas and the use of vessel stores and other supplies of a dangerous nature have preemptive effect over state regulation in these fields.

Title 33 U.S.C. 3301 subjects passenger vessels to Coast Guard inspection, and 33 U.S.C. 3306 provides the Coast Guard with clear authority to establish safety regulations for such vessels. Our proposed rule would revise and update stability standards for passenger vessels subject to Coast Guard regulations covered by 46 CFR subchapters H, K or T. These factors support the Coast Guard's determination herein that States may not regulate within the categories covered by this proposed rule, and the Coast Guard hereby determines that if States were to regulate on these subjects it would frustrate the purpose of these rules, which is to establish a uniform national scheme as directed by Congress. Therefore, under E.O. 13132, this proposed rule would not have an implication under federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. 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.

I. 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.

J. Indian Tribal Governments

To determine whether the proposed rule would have an impact on any Indian tribal governments, we queried MISLE to obtain a list of inspected vessels potentially owned or operated by Indian tribes. The list was augmented by a thorough Internet search. The electronic file for each vessel was then examined for any relationship to a tribal organization. Additionally, we questioned Coast Guard field units to determine whether the cognizant OCMIs were aware of any tribally owned vessels.

Although we found one vessel that was confirmed to be owned by an Indian tribe, there would be no impact to that vessel from this proposed rule. Consequently, we determined that 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.

K. 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 and it 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.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, 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 uses the following voluntary consensus standards: American Society for Testing and Materials (ASTM) and Military Specification, Naval Publications and Forms Center, Code 1052. The proposed sections that reference these standards and the locations where these standards are available are listed in §§ 170.015, 170.270, 174.007 and 174.100.

If you disagree with our analysis of the voluntary consensus standards listed above or are aware of voluntary consensus standards that might apply but are not listed, please identify them in a comment to the Docket Management Facility at the address under **ADDRESSES** and explain why they should be used.

M. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination under the Commandant Instruction that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 171

Marine safety, Passenger vessels, Incorporation by reference.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation Marine safety, Incorporation by reference.

46 CFR Part 174

Marine safety, Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 178

Marine safety, Passenger vessels.

46 CFR Part 179

Marine safety, Passenger vessels, Incorporation by reference.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 71, 114, 115, 122, 170, 171, 172, 174, 175, 176, 178, 179, and 185 as follows:

PART 71—INSPECTION AND CERTIFICATION

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 122234, 45 FR 58801, 3 CFR, 1980 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

2. Redesignate § 71.25–50 as § 71.25–95, and add new § 71.25–50 to read as follows:

§ 71.25–50 Stability verification.

(a) At each annual inspection, the owner or operator of each vessel must demonstrate:

(1) That the stability information required under subpart D of part 170 of this title has been re-examined and confirmed to be appropriate for the loading and service intended; and,

(2) The means by which the master complies with the requirements of §§ 78.17–20 and 78.17–22 of this title.

(b) The owner or operator must verify, using current vessel measurements, that the vessel complies with the stability requirements of subchapter S of this chapter—

(1) Not more than ten years after the most recent verification required by this paragraph or issuance of stability information required by § 170.120 of this title; and,

(2) Following any modification or alteration that may affect the validity of the stability information required by § 170.120 of this title.

(c) For the purposes of paragraph (b) of this section—

(1) Calculations necessary for the verification must satisfy the requirements of § 170.090 of this title regardless of the contract date of the vessel;

(2) The vessel measurements must include a deadweight survey to verify the lightweight displacement and longitudinal center of gravity used to show compliance with the requirements of Subchapter S of this chapter; and,

(3) If the results of a deadweight survey show a deviation from the lightweight displacement exceeding 2 percent, or a deviation from the longitudinal center of gravity exceeding 1 percent of the length between perpendiculars (LBP) as defined in § 170.055 of this title, then—

(i) A stability test must be conducted in compliance with the requirements of subpart F of part 170 of this title, except that the test may not be dispensed with on the basis of approved results of a sister vessel; and

(ii) The verification required by paragraph (b) of this section must use the newly determined lightweight displacement and centers of gravity.

(d) The Commanding Officer, Marine Safety Center or the cognizant OCMI, whichever issued the vessel's stability information, may dispense with or authorize a change or deferral of the requirements of paragraph (b) of this section when the vessel's stability can be adequately assessed by alternate means.

§ 71.50–1 [Amended]

3. In § 71.50–1, add at the end of the definition of ''Drydock examination'' the words '', including verification of the accuracy of draft marks''.

4. Revise the heading to subpart 71.75 to read as follows:

Subpart 71.75—Certificates Under the International Convention for Safety of Life at Sea, 1974

§ 71.75–1 [Amended]

5. In § 71.75–1(a), insert the words ''or certificated for'', after the word ''on''.

§ 71.75–5 [Amended]

6. In § 71.75–5—

a. In paragraph (a), add the words ''or certificated for'', after the word ''on'' and, immediately before the word ''Passenger'', add the word ''SOLAS''.

b. In paragraph (b), add the words ''or certificated for'', after the word ''on'' and, at the end of the paragraph, add ''in addition to the applicable requirements of SOLAS.''

PART 114—GENERAL PROVISIONS

7. Revise the authority citation for part 114 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

8. Amend § 114.400(b) by—

a. Removing paragraph (3) from the definition of ''Length''; and,

b. Adding a new definition for ''Variable load'' in alphabetical order to read as follows:

§ 114.400 Definition of terms used in this subchapter.

* * * * *

Variable load means the weight of all items brought on board a vessel for which explicit account is not made in approved stability calculations, including but not limited to, personal effects, carry-on items, luggage, wheelchairs, and sporting equipment.

* * * * *

PART 115—INSPECTION AND CERTIFICATION

9. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

10. In § 115.110, revise paragraphs (d)(2) and (d)(3), and add new paragraph (d)(4) to read as follows:

§ 115.110 Routes permitted.

* * * * *

(d) * * *

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes, maneuverability, and other characteristics;

(3) The suitability of the vessel for night-time operations; and,

(4) The suitability of the vessel for all environmental conditions.

11. Revise § 115.112 to read as follows:

§ 115.112 Total persons permitted.

The cognizant OCMI determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons, the OCMI may consider: the total weight of passengers, crew, and variable loads; stability restrictions and subdivision requirements of the vessel; the vessel's route, general arrangement, means of escape, and lifesaving equipment; minimum manning requirements; and the maximum number of passengers permitted in accordance with § 115.113.

12. Add § 115.505 to subpart E to read as follows:

§ 115.505 Stability verification.

(a) At each annual inspection or subsequent inspection for certification, the owner or operator of each new and existing vessel must demonstrate—

(1) That the stability information required under subpart D of part 170 of this title has been re-examined and confirmed to be appropriate for the loading and service intended; and

(2) The means by which the master complies with the requirements of § 122.315 of this title.

(b) The owner or operator of each new and existing vessel must verify, using

current vessel measurements and to the satisfaction of the OCMI, that the vessel complies with the stability requirements of subchapter S—

(1) Not more than ten years after the most recent verification required by this paragraph or issuance of stability information required by § 170.120 of this title; and,

(2) Following any modification or alteration that may affect the validity of the stability information required by § 170.120 of this title.

(c) For the purposes of paragraph (b) of this section—

(1) Calculations necessary for the verification must satisfy the requirements of § 170.090 of this title regardless of the contract date of the vessel;

(2) The vessel measurements must include a deadweight survey to verify the lightweight displacement and longitudinal center of gravity used to show compliance with the requirements of Subchapter S of this chapter; and

(3) If the results of a deadweight survey show a deviation from the lightweight displacement exceeding 2 percent, or a deviation from the longitudinal center of gravity exceeding 1 percent of LBP as defined in § 170.055 of this title, then—

(i) A stability test must be conducted in compliance with the requirements of subpart F of part 170 of this title, except that the test may not be dispensed with on the basis of approved results of a sister vessel; and

(ii) The verification required by paragraph (b) of this section must use the newly determined lightweight displacement and centers of gravity.

(d) The Commanding Officer, Marine Safety Center or the cognizant OCMI, whichever issued the vessel's stability information, may dispense with or authorize a change or deferral of the requirements of paragraph (b) of this section when the vessel's stability can be adequately assessed by alternate means.

13. In § 115.610, add two sentences to the end of paragraph (a) to read as follows:

§ 115.610 Scope of drydock and internal structural examinations.

(a) * * * The accuracy of draft or loading marks, if required by § 122.602, must be verified. If the vessel's stability information includes any operating restrictions that refer to draft or loading marks, the draft or loading marks must be confirmed to correspond to that information.

* * * * *

§ 115.900 [Amended]

14. Amend § 115.900(a) as follows: a. Add the words ''is certificated for or'' after the word ''which''; b. Remove the word ''an'' and, c. Remove the word ''voyage'' and add, in its place, the word ''voyages''.

§ 115.910 [Amended]

15. Amend § 115.910(a) as follows: a. Remove the word ''issues'' in the second sentence and, add, in its place, the words ''authorizes the cognizant OCMI to issue''; and b. In the last sentence, after the word ''will'', add the words ''authorize the cognizant OCMI to''.

§ 115.920 [Amended]

16. In § 115.920(d), after the word ''will'' in the first sentence, and after the word ''Commandant'' in the second sentence, add the words ''will authorize the cognizant OCMI to''.

§ 115.930 [Amended]

17. In § 115.930, in the last sentence, remove the words ''Commandant will indicate the'' and, after the word ''equivalent'' add the words ''must be indicated''.

PART 122—OPERATIONS

18. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

19. In § 122.304, revise paragraph (a)(3) to read as follows:

§ 122.304 Navigation underway.

(a) * * *

(3) Prevailing and forecasted visibility and environmental conditions, including wind and waves;

* * * * *

20. In § 122.315, designate the existing paragraph as paragraph (a), and add paragraph (b) to read as follows:

§ 122.315 Verification of vessel compliance with applicable stability requirements.

(a) * * *

(b) In order to fulfill the requirements of paragraph (a) of this section and avoid overloading the vessel, the master must take into account the total weight of passengers, crew, and variable loads.

§ 122.602 [Amended]

21. Amend § 122.602 as follows:

a. In paragraph (c), remove the words ''that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter or with § 178.310 of this chapter''; b. Remove paragraph (b); and, c. Redesignate paragraphs (c) through (g) as paragraphs (b) through (f).

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

22. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

23. In § 170.001, revise paragraph(a) to read as follows:

§ 170.001 Applicability.

(a) This subchapter applies to each vessel that is—

(1) Contracted for on or after March 11, 1996, except where specifically stated otherwise; and,

(2) Is inspected under another subchapter of this chapter, or is a foreign vessel that must comply with the requirements in subchapter O of this chapter, or is required by either subchapter C or subchapter E of this chapter to meet applicable requirements contained in this subchapter.

* * * * *

24. Revise § 170.015 to read as follows:

§ 170.015 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm1*. It is also available for inspection at the Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) American Society for Testing and Materials (ASTM) 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F 1196–00, Standard Specification for Sliding Watertight Door Assemblies, incorporation by reference approved for § 170.270.

(2) ASTM F 1197–00, Standard Specification for Sliding Watertight Door Control Systems, incorporation by reference approved for § 170.270.

(c) Military Specification, Naval Publications and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) MIL–P–21929B, Plastic Material, Cellular Polyurethane, Foam in Place, Rigid, 1970, incorporation by reference approved for § 170.245.

(2) [Reserved]

(d) International Maritime Organization (IMO), International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) International Convention for the Safety of Life at Sea (SOLAS), 1974, and its Protocol of 1988: articles, annexes and certificates, as amended, chapter II–1 (SOLAS chapter II–1), incorporation by reference approved for §§ 170.140, 170.248.

(2) International Code on Intact Stability, 2008 (2008 IS Code), incorporation by reference approved for § 170.165.

25. Amend § 170.055, by redesignating paragraphs (m) through (w) as paragraphs (o) through (y), redesignating paragraphs (e) through (l) as paragraphs (f) through (m), and adding new paragraphs (e) and (n) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(e) *Constructed* means the date—

(1) The vessel's keel was laid; or

(2) Construction identifiable with the vessel began and assembly of that vessel commenced comprising of 50 metric tons or at least one percent of the estimated mass of all structural material, whichever is less.

* * * * *

(n) *Passenger fraction* (W/Δ) is the ratio of the weight of the maximum number of permitted passengers and their personal effects to the overall displacement of the vessel in a given loading condition.

* * * * *

§ 170.070 [Amended]

26. In § 170.070(b) introductory text, add after the word ''OCMI'' the words '', or regulations by which the vessel is inspected require their application.''

§ 170.075 [Amended]

27. In § 170.075(a), remove the words ''or four copies for plan review being conducted by the American Bureau of Shipping (ABS)''.

§ 170.080 [Amended]

28. In § 170.080, remove the words ''or four copies for plan review being conducted by the ABS''.

§ 170.085 [Amended]

29. In § 170.085, remove the words ''or the ABS''

30. Revise § 170.090 by revising paragraph (a), and adding paragraphs (c), (d), (e) and (f) to read as follows:

§ 170.090 Calculations.

(a) All calculations required by this subchapter must be submitted with the plans required by § 170.075.

* * * * *

(c) The assumed average weight per person for calculations showing compliance with the regulations of this subchapter must be representative of the passengers and crew aboard the vessel while engaged in the service intended. Unless the OCMI permits or requires the use of other values in writing, the average weight per person of passengers and crew should not be less than that computed by paragraph (e) of this section.

(d) The formula in paragraph (e) of this section will be used to determine the assumed average weight per person. It requires the use of the most recent mean weights of males and of females aged 20 years, as determined by Centers for Disease Control and Prevention (CDC). CDC releases this data periodically through the National Center for Health Statistics (NCHS) in a report that lists the most recent mean body weight data for the population of the United States. This report can be found on CDC's Web site. The Coast Guard will publish the availability of this report each time it is updated by the CDC, and the assumed average weight per person, as determined by the formula in paragraph(e) of this section, in a **Federal Register** Notice, without further rulemaking procedures. The assumed average weight per person will become effective 60 days from publication of the notice.

(e) The assumed average weight per person will be determined as follows: Add the mean weight of males aged 20 years and over to the mean weight of females aged 20 years and over, and divide the sum by 2. To this average mean weight, add 7.5 pounds of assumed clothing weight. The resulting sum, rounded to the nearest whole number in pounds, is the assumed average weight per person.

(f) Calculations must account for the weight of all loads carried aboard the vessel.

§ 170.093 [Amended]

31. In § 170.093, remove the last sentence.

§ 170.100 [Amended]

32. Amend § 170.100 by removing paragraphs (c) and (d).

33. Add § 170.105(b)(5) to read as follows:

§ 170.105 Applicability.

* * * * *

(b) * * *

(5) A small passenger vessel inspected under subchapter T of this chapter if § 178.210(c) of this title is applicable.

§ 170.110 [Amended]

34. In § 170.110(b), remove the words ''or the ABS''.

§ 170.120 [Amended]

35. In § 170.120(a), remove the words ''or the ABS''.

§ 170.135 [Removed]

36. Remove § 170.135.

37. Add § 170.140 to subpart D to read as follows:

§ 170.140 Operating information for a vessel constructed on or after 1 January 2009 and issued a SOLAS safety certificate.

(a) This section applies to each vessel that is—

(1) Constructed on or after January 1, 2009; and,

(2) Issued either a SOLAS Passenger Ship Safety Certificate or a SOLAS Cargo Ship Safety Construction Certificate.

(b) In addition to the information required in § 170.110 of this part, the stability booklet of each vessel to which this section applies must contain the information required by applicable regulations of SOLAS chapter II–1 (incorporated by reference, see § 170.015).

(c) As used in SOLAS chapter II–1, *Administration* means the Commandant, U.S. Coast Guard.

38. Revise the heading of Subpart E to read as follows:

Subpart E—Intact Stability Criteria

39. In § 170.160 revise paragraphs (a) and (c)(3) and add paragraph (d) to read as follows:

§ 170.160 Specific applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this subpart applies to each vessel.

* * * * *

(c) * * *

(3) A vessel that performs one of the simplified stability proof tests described in subpart C of part 178 of this title.

(d) A vessel that complies with § 170.165 of this title need not comply with §§ 170.170 and 170.173 of this title.

40. Add § 170.165 to read as follows:

§ 170.165 International Code on Intact Stability.

(a) Each vessel issued one or more of the certificates listed in paragraphs (a)(1) through (4) of this section, must comply with the Introduction and Part A of the International Code on Intact Stability, 2008 (2008 IS Code):

(1) International Load Line Certificate.

(2) SOLAS Passenger Ship Safety Certificate.

(3) SOLAS Cargo Ship Safety Construction Certificate.

(4) High-Speed Craft Safety Certificate.

(b) A vessel not subject to the requirements of paragraph (a) of this section is permitted to comply with the applicable criteria contained in the 2008 IS Code as an alternative to the requirements of §§ 170.170 and 170.173 of this title.

41. In § 170.170, revise the section heading and paragraphs (a) and (b), and the second sentence of paragraph (d), and add paragraph (e) to read as follows:

§ 170.170 Weather criteria.

(a)(1) Except as provided in paragraph (b) of this section, each vessel must be shown by design calculations in each condition of loading and operation to have a calculated angle of heel not greater than:

(i) For a sailing vessel, 14 degrees or the angle of heel at which the deck edge is immersed, whichever is less; or,

(ii) For a non-sailing vessel, 14 degrees or the angle of heel at which one-half the freeboard to the deck edge is immersed, whichever is less.

(2) The calculated angle of heel is defined as the angle at which the righting arm curve intersects the wind heeling arm curve given by the following equation:

Heeling arm = $P \times A \times H \times \cos(T)/\Delta$

Where—

P = $0.005 + (L/14{,}200)^2$ tons/f^2 * * * for ocean service, Great Lakes winter service, or service on exposed waters.

P = $0.055 + (L/1309)^2$ metric tons/m^2 * * * for ocean service, Great Lakes winter service, or service on exposed waters.

P = $0.0033 + (L/14{,}200)^2$ tons/ft^2 * * * for Great Lakes summer service or service on partially protected waters.

P = $0.036 + (L/1309)^2$ metric tons/m^2 * * * for Great Lakes summer service or service on partially protected waters.

P = $0.0025 + (L/14{,}200)^2$ tons/ft^2 * * * for service on protected waters.

P = $0.028 + (L/1309)^2$ metric tons/m^2 * * * for service on protected waters.

L = LBP in feet (meters).

A = Area in square feet (square meters) of the projected lateral surface of the portion of the vessel above the waterline (including the hull, superstructure, cargo, masts, area bounded by railings, canopies, or similar obstructions but not protruding objects such as antennas or running rigging).

H = the vertical distance in feet (meters) from the center of A to the center of the underwater lateral area or approximately to the one-half draft point.

T = angle of heel.

Δ = Displacement in long tons (metric tons).

(b) If approved by the Coast Guard Marine Safety Center, a larger value of T may be used for a vessel with a discontinuous weather deck or abnormal sheer.

* * * * *

(d) * * * On other types of vessels, the Coast Guard Marine Safety Center requires calculations in addition to those in paragraph (a) of this section. * * *

(e) For the purposes of this subpart, a vessel's righting arm must be calculated considering the vessel is permitted to trim free until the trimming moment is zero.

§ 170.173 [Amended]

42. In § 170.173(a) introductory text, remove the words ''or the ABS''.

§ 170.175 [Amended]

43. Amend § 170.175 as follows:

a. In paragraph (b) remove the words ''or ABS''; and,

b. In paragraphs (c) and (d) remove the words ''or the ABS''.

§ 170.180 [Amended]

44. In § 170.180 introductory text, remove the words ''or ABS'' in both places where it appears.

§ 170.185 [Amended]

45. In § 170.185(b), remove the words ''or the ABS''.

§ 170.190 [Amended]

46. In § 170.190, remove the words ''or ABS''.

§ 170.235 [Amended]

47. In § 170.235(b), remove the words ''or the ABS''.

48. In § 170.248, revise paragraph (a) and add paragraph (d) to read as follows:

§ 170.248 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this subpart applies to vessels with watertight doors in bulkheads that have been made watertight to comply with the flooding or damage stability regulations in this subchapter.

* * * * *

(d) Each vessel issued a SOLAS Passenger Ship Safety Certificate or a SOLAS Cargo Ship Safety Construction Certificate must comply with the applicable regulations of SOLAS chapter II–1 in addition to the requirements of this subpart (SOLAS chapter II–1, incorporated by reference, see § 170.015).

§ 170.270 [Amended]

49. In § 170.270—

a. Remove the term ''ASTM F 1196'' wherever it appears and, in its place, add the term ''ASTM F 1196–00'', and remove the term ''ASTM F 1197'' wherever it appears and, in its place, add the term ''ASTM F 1197–00''; and

b. In paragraph (a)(3), remove the words ''(incorporated by reference, see § 170.015)'' wherever they appear.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

50. The authority citation for part 171 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

51. In § 171.001, revise paragraph (a), and add paragraphs (c) and (d) to read as follows:

§ 171.001 Applicability.

(a) Except as provided in paragraph (d) of this section, this part applies to passenger vessels inspected under subchapter K or H of this chapter, or a passenger vessel the stability of which is questioned by the OCMI.

* * * * *

(c) Specific sections of this part may also apply to a small passenger vessel inspected under subchapter T of this chapter. The specific sections are listed in subparts B and C of part 178 of this title and in subpart B of part 179 of this title.

(d) A passenger vessel constructed on or after 1 January 2009 and issued a SOLAS Passenger Ship Safety Certificate must meet the applicable requirements of SOLAS chapter II–1 (incorporated by reference, see § 171.012), instead of the requirements of this part. For the purposes of this section, the applicable requirements of SOLAS chapter II–1, are equivalent to the requirements of this part when applied to such vessels.

52. Add new § 171.012 to read as follows:

§ 171.012 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition

other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm1*. It is also available for inspection at the Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) International Maritime Organization (IMO) International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1988: articles, annexes and certificates, as amended, chapter II–1 (SOLAS chapter II–1), incorporation by reference approved for §§ 171.001, 171.080.

(2) International Code on Intact Stability, 2008 (2008 IS Code), incorporation by reference approved for § 171.050.

53. Add the heading of subpart B to read as follows:

Subpart B—Intact Stability

Subpart C—Heading [Removed]

54. Remove the heading for subpart C and transfer §§ 171.045, 171.050, 171.055, and 171.057 to subpart B.

55. Revise § 171.045 to read as follows:

§ 171.045 Weight of passengers and crew.

(a) This section applies to each vessel, regardless of when constructed.

(b) Compliance with the intact stability requirements applicable to each vessel, using a total weight of passengers and crew carried, is based upon an assumed average weight per person determined in accordance with paragraph (c) of § 170.090 of this title.

56. Revise § 171.050 to read as follows:

§ 171.050 Passenger heel requirements for a mechanically propelled or a nonself-propelled vessel.

(a) Except as provided in paragraph (c) of this section, each vessel must be shown by design calculations in each condition of loading and operation to have a calculated angle of heel not greater than 14 degrees or the angle of heel at which the deck edge is first submerged, whichever is less. In any condition of loading, the calculated angle of heel is defined as the angle at which the righting arm curve intersects the heeling arm curve given by the following equation:

$$\text{Heeling arm} = (W/\Delta)(2/3)(b)(\cos(T))$$

Where:

W/Δ = passenger fraction
W = total weight in long (metric) tons of persons other than required crew, including personal effects expected to be carried on the vessel
Δ = displacement of the vessel in long (metric) tons
b = distance in feet (meters) from the centerline of the vessel to the geometric center of the passenger deck to one side of the centerline
T = angle of heel

(b) For the purpose of this section, a vessel's righting arm must be calculated considering the vessel is permitted to trim free until the trimming moment is zero.

(c) A vessel that complies with the requirements for passenger ships contained in the International Code on Intact Stability, 2008 (2008 IS Code) (incorporated by reference; see § 171.012) need not comply with paragraph (a) of this section. Vessels complying with the 2008 IS Code must use the assumed average weight per person given according to § 170.090 to be exempt from paragraph (a) of this section.

57. Add new § 171.052 to read as follows:

§ 171.052 Passenger distribution requirements for vessels of unusual proportion and form.

(a) Vessels to which § 170.173 of this title applies must also comply with the requirements of paragraph (b) of this section.

(b) For a vessel with a passenger fraction greater than 15 percent, and with passengers distributed in the accommodation area to produce the most unfavorable combination of passenger heeling moment and/or initial metacentric height, the area under each righting arm curve from the angle of equilibrium to an angle of 40 degrees, the downflooding angle, or the angle of the maximum righting arm, whichever is less, must not be less than:

(1) For exposed and partially protected routes—

(i) 10 foot-degrees with 5 square feet per person (2.15 persons per square meter) assumed in the areas accessible to passengers; and

(ii) 7 foot-degrees with 2 square feet per person (5.38 persons per square meter) assumed in the areas accessible to passengers; and

(2) For protected routes—

(i) 5 foot-degrees with 5 square feet per person (2.15 persons per square meter) assumed in the areas accessible to passengers; and

(ii) 2 foot-degrees with 2 square feet per person (5.38 persons per square meter) assumed in the areas accessible to passengers.

58. Add a heading for subpart C, above § 171.060, to read as follows:

Subpart C—Subdivision and Damage Stability

§ 171.060 [Amended]

59. In § 171.060(a), remove the words ''or § 171.075 for Type III subdivision''.

§ 171.065 [Amended]

60. In § 171.065(b)(2), remove the second equation, ''Y = (M + 2P) / (V + P1 − P)'' and add, in its place, the equation ''Y = (M + 2P1) / (V + P1 − P)''.

§ 171.070 [Amended]

61. In § 171.070(e)(1) introductory text, add the words ''or the vessel makes international voyages,'' after the words ''If the LBP of the vessel is 143 feet (43.5 meters) or more,''.

§ 171.075 [Removed]

62. Remove § 171.075.

§ 171.080 [Amended]

63. Amend § 171.080 as follows:

a. In § 171.080 (f)(4)(i), remove ''w = passenger weight = 75 kilograms,'' and add, in its place, ''w = passenger weight used for calculations complying with § 170.090 of this title'';

b. In § 171.080(f)(4)(ii)(A), remove the words ''Each passenger weighs 75 kilograms'' and add, in their place, the words ''The weight of each passenger is taken at the weight used for calculations complying with § 170.090 of this title''; and,

c. In the heading to paragraph (g), after the word ''vessels'' add the words ''constructed before January 1 2009'', and, in paragraph (g) text, after the words ''regulation 8'' add the words ''in force on December 31, 2008 (incorporated by reference; see § 171.012)''.

§ 171.082 [Removed]

64. Remove § 171.082.

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

65. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.

277; Department of Homeland Security Delegation No. 0170.1.

66. Revise § 172.020 to read as follows:

§ 172.020 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm1*. It is also available for inspection at the Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) International Maritime Organization (IMO), International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) Amendment to Chapter VI of the International Convention for the Safety of Life at Sea, 1960, Resolution A.264(VIII), incorporation by reference approved for § 172.015.

(2) Publication No. 240–E, International Code for the Safe Carriage of Grain in Bulk, incorporation by reference approved for § 172.015.

(3) Regulation 27, annex I of MARPOL 73/78, incorporation by reference approved for § 172.070.

67. Revise § 172.070 to read as follows:

§ 172.070 Intact Stability.

All tank vessels of 5,000 DWT and above, contracted after December 3, 2001, must comply with the intact stability requirements of Regulation 27, annex I of MARPOL 73/78 (incorporated by reference; see § 172.020).

PART 174—SPECIAL RULES PERTAINING TO SPECIAL VESSEL TYPES

68. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

69. Revise § 174.007 to read as follows:

§ 174.007 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm1*. It is also available for inspection at the Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources listed below.

(b) American Society for Testing and Materials (ASTM) 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F 1196–00, Standard Specification for Sliding Watertight Door Assemblies, incorporation by reference approved for § 174.100.

(2) ASTM F 1197–00, Standard Specification for Sliding Watertight Door Control Systems, incorporation by reference approved for § 174.100.

(c) International Maritime Organization (IMO), International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) International Convention for the Safety of Life at Sea (SOLAS), 1974, and its Protocol of 1988: articles, annexes and certificates, as amended, chapter II–1 (SOLAS chapter II–1), incorporation by reference approved for § 174.360.

(2) [Reserved]

§ 174.100 [Amended]

70. In § 174.100—

a. Remove the term ''ASTM F 1196'' wherever it appears and, in its place, add the term ''ASTM F 1196–00'', and remove the term ''ASTM F 1197'' wherever it appears and, in its place, add the term ''ASTM F 1197–00''; and

b. In paragraph (e)(3), remove the words ''(incorporated by reference, see § 174.007)'' wherever they appear.

71. Revise § 174.360 to read as follows:

§ 174.360 Calculations.

Each ship to which this subpart applies must comply with the minimum standard of subdivision and damage stability applicable to that ship under SOLAS chapter II–1, (incorporated by reference; see § 174.007) part B–1. Compliance with the applicable requirements must be demonstrated by calculations and reflected in information on loading restrictions, such as a maximum height of the center of gravity (KG) or minimum metacentric height (GM) curve, that is part of the stability information required by § 170.110 of this chapter.

PART 175—GENERAL PROVISIONS

72. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 175.900 also issued under 44 U.S.C. 3507.

73. In § 175.400, add new definitions for ''Total test weight'' and ''Variable load'' in alphabetical order to read as follows:

§ 175.400 Definition of terms used in this subchapter.

* * * * *

Total test weight means the weight used to simulate heeling and trimming moments when a simplified stability test is performed in accordance with § 178.330 or § 178.340 of this title.

* * * * *

Variable load means the weight of all items brought on board a vessel for which explicit account is not made in approved stability calculations, including but not limited to, personal effects, carry-on items, luggage, wheelchairs, and sporting equipment.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

74. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

75. In § 176.110, revise paragraphs (d)(2) and (d)(3), and add paragraph (d)(4) to read as follows:

§ 176.110 Routes permitted.

* * * * *

(d) * * *

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes,

maneuverability, and other characteristics;

(3) The suitability of the vessel for nighttime operations; and

(4) The suitability of the vessel for all environmental conditions.

76. Revise § 176.112 to read as follows:

§ 176.112 Total persons permitted.

The cognizant OCMI determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons, the OCMI may consider: The total weight of passengers, crew, and variable loads; stability restrictions and subdivision requirements of the vessel; the vessel's route, general arrangement, means of escape, and lifesaving equipment; minimum manning requirements; and the maximum number of passengers permitted in accordance with § 176.113 of this title.

77. Add § 176.505 to subpart E to read as follows:

§ 176.505 Stability verification.

(a) At each annual inspection and subsequent inspection for certification, the owner or operator of each new and existing vessel must demonstrate—

(1) That the stability information required under subpart B of part 178 of this title has been re-examined and confirmed to be appropriate for the loading and service intended; and

(2) The means by which the master complies with the requirements of § 185.315 of this title must be demonstrated.

(b) The owner or operator of each new or existing vessel must verify, using current vessel measurements, and to the satisfaction of the OCMI, that the vessel complies with the stability requirements of this subchapter—

(1) Not more than ten years after the date of the most recent verification required by this paragraph or issuance of stability information required by § 178.210 of this title; and,

(2) Following any modification or alteration that may affect the validity of the stability information required by § 178.210.

(c) For the purposes of paragraph (b) of this section—

(1) If § 178.320 (e), (f), (g), or (h) of this title is applicable, the verification must include—

(i) Measurements with the vessel in a condition that is the same as that used in or documented when the most recent simplified stability proof test specified in paragraph (a) of either §§ 178.330 or 178.340 was performed;

(A) If § 178.330 of this title is applicable, freeboard measurements; or

(B) If § 178.340 of this title is applicable, measurements of cross-sectional area;

(ii) An assessment of the total test weight regardless of the contract date of the vessel according to § 178.330(a)(4) of this title; and

(iii) A validation that the vessel arrangement is substantially unchanged from the date when the most recent stability verification or simplified stability proof test was performed;

(2) If § 178.310(a) or § 178.320(c) of this title is applicable—

(i) Calculations necessary for the verification must satisfy the requirements of § 170.090 of this title regardless of the contract date of the vessel;

(ii) The vessel measurements must include a deadweight survey to verify the lightweight displacement and longitudinal center of gravity used to show compliance with the requirements of Subchapter S of this chapter; and,

(iii) If the results of a deadweight survey show a deviation from the lightweight displacement exceeding 2 percent, or a deviation of the longitudinal center of gravity exceeding 1 percent of LBP as defined in § 170.055 of this title, then—

(A) A stability test must be conducted in compliance with the requirements of subpart F of part 170 of this title, except that the test may not be dispensed with on the basis of approved results of a sister vessel; and

(B) The verification required by paragraph (b) of this section must use the newly determined lightweight displacement and centers of gravity.

(3) If § 178.310 (c) or § 178.320 (d) of this title applies, the scope of the verification will be determined by the Commanding Officer, Marine Safety Center.

(d) The Commanding Officer, Marine Safety Center or the cognizant OCMI, whichever issued the vessel's stability information, may dispense with or authorize a change or deferral of the requirements of paragraph (b) of this section when the vessel's stability can be adequately assessed by alternate means.

§ 176.610 [Amended]

78. In § 176.610, add two sentences to the end of paragraph (a) to read as follows:

§ 176.610 Scope of drydock and internal structural examinations.

(a) * * * The accuracy of draft or loading marks, if required by § 122.602, must be verified. If stability information includes any operating restrictions that refer to draft or loading marks, the draft or loading marks must be confirmed to correspond to that information.

* * * * *

§ 176.900 [Amended]

79. Amend § 176.900(a) as follows:

a. Add the words ''is certificated for or'' after the word ''which'';

b. Remove the word ''an,'' and,

c. Remove the word ''voyage'' and add, in its place, the word ''voyages''.

§ 176.910 [Amended]

80. Amend § 176.910(a) as follows:

a. Remove the word ''issues'' in the second sentence and, add, in its place, the words ''authorizes the cognizant OCMI to issue''; and

b. In the last sentence, after the word ''will'', add the words ''authorize the cognizant OCMI to''.

§ 176.920 [Amended]

81. In § 176.920(d), after the word ''will'' in the first sentence, and after the word ''Commandant'' in the second sentence, add the words ''will authorize the cognizant OCMI to''.

§ 176.930 [Amended]

82. In § 176.930, in the last sentence remove the words ''Commandant will indicate the'' and, after the word ''equivalent'', add the words ''must be indicated''.

PART 178—INTACT STABILITY AND SEAWORTHINESS

83. The authority citation for part 178 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 178.115 [Amended]

84. In § 178.115, at the beginning of the paragraph add the words ''Except where specifically stated otherwise,''.

85. In § 178.210, revise the first sentence of paragraphs (a) and (b), revise paragraph (c), and add paragraph (d) to read as follows:

§ 178.210 Stability information.

(a) Stability information (stability details indicated on the Certificate of Inspection, a stability letter, or a stability booklet) is required on certain vessels by paragraphs (b), (c), or (d) of this section. * * *

(b) A vessel which, under § 178.310 of this title, complies with requirements in subchapter S of this chapter, must have stability details on the vessel's Certificate of Inspection, a stability letter issued by the cognizant Officer in Charge, Marine Inspection (OCMI) or the Commanding Officer, Marine Safety

Center, or an approved stability booklet.
* * *

(c) When necessary for safe operation, the cognizant OCMI may place specific stability restrictions in a stability letter or on the Certificate of Inspection of a vessel not more than 65 feet (19.8 meters) in length, which, under § 178.310 of this title, complies with the requirements of § 178.320 of this title.

(d) A vessel that complies with § 178.320(b), and undergoes a stability test in accordance with § 178.340, must have a stability letter issued by the Commanding Officer, Marine Safety Center.

86. Add new § 178.215 to read as follows:

§ 178.215 Weight of passengers and crew.

(a) This section applies to each vessel, regardless of when constructed, for which stability information is based on the results of a simplified stability proof test.

(b) Except as provided in paragraph (c) of this section, and if not provided in the stability information required, the owner of each vessel must provide the master with the total test weight used in the simplified stability proof test and the number of passengers and crew included in the total test weight. Owners and masters must use a total weight of passengers and crew carried that is based upon an assumed average weight per person determined in accordance with paragraph (c) of § 178.330(a)(4) of this title.

(c) The information specified in paragraph (b) of this section need not be provided if the owner attests that the vessel complies with applicable intact stability requirements when carrying the number of passengers and crew permitted by the Certificate of Inspection with an assumed average weight per person in accordance with § 178.330(a)(4) of this title.

87. In § 178.230, revise paragraphs (b) introductory text and (b)(1), and add paragraph (c) to read as follows:

§ 178.230 Stability letter or Certificate of Inspection stability details.

* * * * *

(b) If § 178.210(c) applies, the following information, and the necessary calculations used to determine that information, must be submitted in accordance with paragraph (a) of this section:

(1) Allowable weight and number of passengers and crew on each deck;

* * * * *

(c) If § 178.210(b) applies, the applicable information described in subpart C of part 170 of this title, and the calculations used to determine that information, must be submitted in addition to the applicable information listed in paragraph (b) of this section.

88. Revise § 178.310 to read as follows:

§ 178.310 Applicability based on vessel characteristics and passenger capacity.

(a) Each vessel that is greater than 65 feet (19.8 meters) in length, carries more than 12 passengers on an international voyage, or has more than one deck above the bulkhead deck excluding the pilot house must meet applicable intact stability requirements in each condition of loading and operation. These requirements are contained in:

(1) Part 170 of this chapter, except subparts G and H; and,

(2) Part 171 of this chapter, subparts A and B.

(b) Each vessel must meet the requirements of § 178.320 of this title if the vessel:

(1) Is 65 feet (19.8 meters) in length or less;

(2) Carries not more than 12 passengers on an international voyage; and

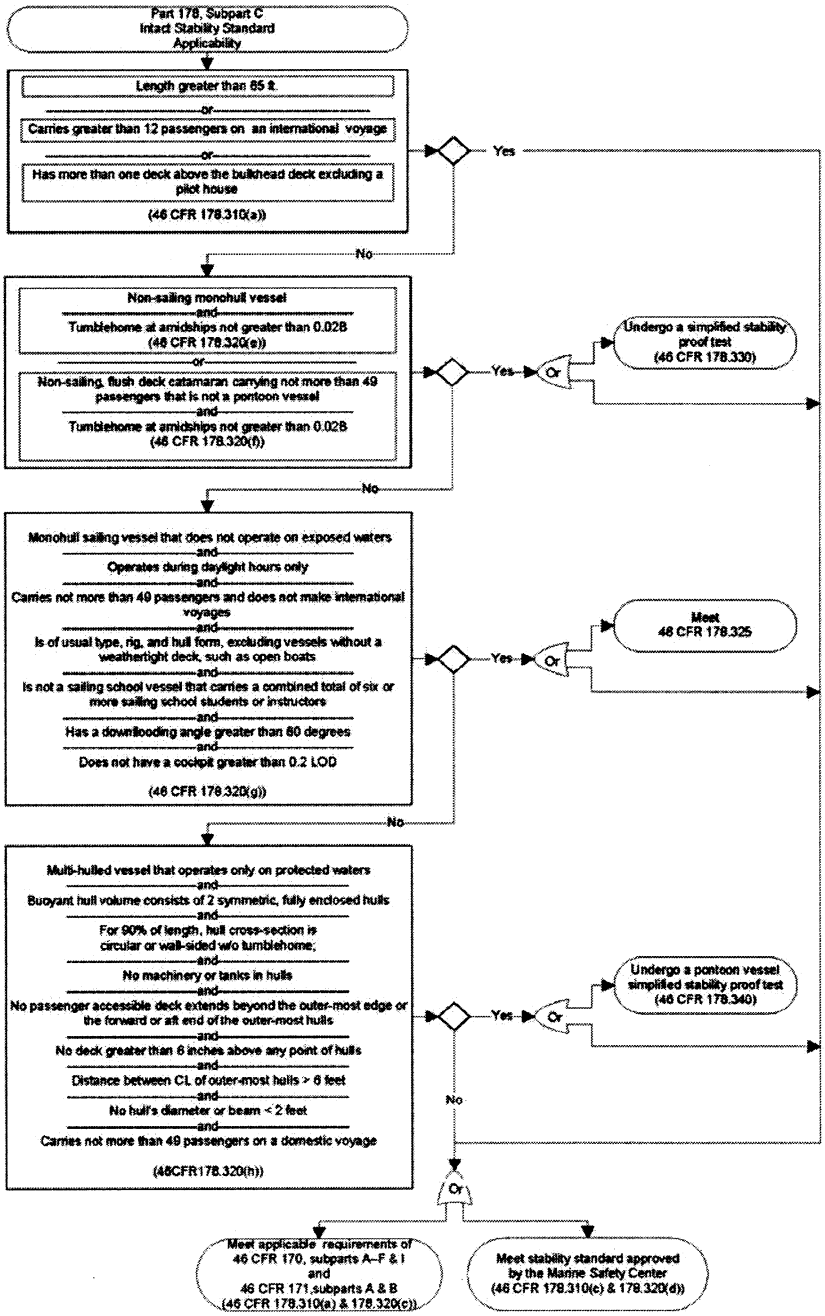
(3) Does not have more than one deck above the bulkhead deck or, for a vessel without a bulkhead deck, does not have more than one deck above the deck from which freeboard is measured excluding a pilot house.

(c) In lieu of the requirements in paragraph (a) of this section, a vessel may meet another stability standard approved by the Commanding Officer, Marine Safety Center.

(d) The requirements of this section and §§ 178.320 and 178.325 are graphically represented in Figure 178.310.

BILLING CODE 4910–15–P

Figure 178.310



BILLING CODE 4910–15–C

89. Revise § 178.320 to read as follows:

§ 178.320 Intact stability requirements.

(a) A simplified stability proof test in accordance with § 178.330 or § 178.340, as appropriate, is conducted to determine if a vessel, as built and operated, has a minimum level of initial stability. Failing the simplified test does not necessarily mean that the vessel lacks stability for the intended route, service, and operating condition, but that calculations or other methods must be used to evaluate the stability of the vessel.

(b) Except as provided by paragraph (i) of this section, each vessel must comply with paragraph (c), (d), (e), (f), (g), or (h) of this section. The cognizant OCMI may require the vessel to meet the requirements of paragraph (c) of this section.

(c) A vessel, in each condition of loading and operation, may meet the applicable intact stability requirements of—

(1) Part 170 of this chapter, except subparts G and H; and,

(2) Part 171 of this chapter, subparts A and B.

(d) In lieu of the requirements in paragraph (a) of this section, a vessel may meet another stability standard approved by the Commanding Officer, Marine Safety Center.

(e) A non-sailing monohull vessel may undergo a simplified stability proof test in accordance with § 178.330 of this title in the presence of a Coast Guard marine inspector if the vessel does not have tumblehome at the deck, measured amidships, that exceeds two percent of the beam.

(f) A non-sailing, flush deck catamaran carrying not more than 49 passengers may undergo a simplified stability proof test in the presence of a Coast Guard marine inspector, in accordance with § 178.330 of this title, if the vessel does not have tumblehome at the deck, measured amidships, that exceeds two percent of the beam, and the vessel is not a pontoon vessel.

(g) A self-propelled multihull vessel may undergo a pontoon simplified stability proof test in the presence of a Coast Guard marine inspector, in accordance with § 178.340 of this title, if the vessel satisfies the requirements listed in paragraphs (g)(1) through (9) of this section:

(1) The vessel carries not more than 49 passengers and does not make international voyages;

(2) The vessel is constructed with only one deck;

(3) The buoyant hull volume consists of two symmetric, fully enclosed hulls;

(4) The cross section of each hull is circular or of wall-sided construction without tumblehome, and constant for at least 90 percent of the length of the hull;

(5) The hulls contain no machinery or tanks;

(6) The portion of the deck accessible to passengers does not extend beyond—

(i) The outboard edge of the hulls, and,

(ii) The forward or the aft end of the hulls;

(7) There is no deck more than 6 inches (0.15 meters) above any point on any of the buoyant hulls;

(8) The distance between the centerlines of the hulls is not less than 6 feet (1.83 meters); and,

(9) Each hull has a beam or diameter, as applicable, of not less than 2 feet (0.61 meters).

(h) A monohull sailing vessel may meet the requirements of § 178.325 of this title if it satisfies the following seven requirements:

(1) The vessel does not operate on exposed waters;

(2) The vessel only operates during the daylight hours;

(3) The vessel is of the usual type, rig, and hull form, excluding vessels without a weathertight deck, such as open boats;

(4) The vessel carries not more than 49 passengers and does not make international voyages;

(5) The vessel is not a sailing school vessel that carries a combined total of six or more sailing school students or instructors;

(6) The minimum downflooding angle is greater than 60 degrees; and,

(7) The vessel does not have a cockpit greater than 20 percent of the Length Over Deck.

(i) For a vessel that carries not more than 49 passengers and carries no deck cargo, the cognizant OCMI may:

(1) Dispense with the requirements of the simplified stability proof test in § 178.330, when the vessel's stability can be adequately assessed by alternate means, which include, but are not limited to, the form, arrangement, construction, number of decks, route, and operating restrictions of the vessel;

(2) Authorize a change in the requirements of the simplified stability proof test in § 178.330, when necessary to adequately assess the vessel's stability; or

(3) In lieu of conducting a simplified stability proof test, perform operational tests to determine whether the vessel has adequate stability and satisfactory handling characteristics for protected waters and/or partially protected waters.

(j) The requirements of this section and §§ 178.310 and 178.325 are graphically represented in Table 178.320.

TABLE 178.320—APPLICABLE INTACT STABILITY CRITERIA

This table summarizes the criteria applicable to a vessel described in § 178.310 (b). These criteria are:
1. Vessel length less than or equal to 65 feet;
2. Not more than 12 passengers carried on an international voyage;
3. Not more than 150 passengers carried on a domestic voyage; and
4. Vessel does not have more than one deck above the bulkhead deck, excluding a pilot house.

A vessel for which a simplified stability proof test is not appropriate must meet criteria contained in 46 CFR Subchapter S or a standard approved by the MSC, unless § 178.320 (i) is applicable.

Propulsion type	Non-sailing				Sailing	
Number of hulls	1		2		1	2
Number of Passengers	>49	<=49	>49	<=49	<=49	
Applicable Proof Test:						
§ 178.330	X	X		Note 1	X	
§ 178.340 (PSST)				Note 1		
MSC approved standard:						
§ 178.310 (c)	X	X	X	X	X	X
OCMI determined standard or dispenses with proof test		Note 2		Note 2	Note 2	
46 CFR Subchapter S criteria:						

TABLE 178.320—APPLICABLE INTACT STABILITY CRITERIA—Continued

Part 170, subpart C "Plan Approval"	X	X	X	X	X	X
Part 170, subpart E "Intact Stability":						
§ 170.170 "Weather criteria"	X	X	X	X	X	X
§ 170.173 "Criterion for vessels of unusual proportion and form"	X	X	X	X	X	X
Part 170, subpart F "Determination of Lightweight Displacement and Centers of Gravity"	X	X	X	X	X	X
Part 171, subpart B "Intact Stability:						
§ 171.050 (passenger heel)	X	X	X	X		
§ 171.052 (passenger distribution)	X	X	X	X	X	X
§ 171.055 (monohull sailing)					X	
§ 171.057 (sailing catamaran)					X	X

Note 1: *See* § 178.320 (f) and § 178.320 (g).
Note 2: *See* § 178.320 (i).

90. Revise § 178.325 to read as follows:

§ 178.325 Intact stability requirements for a monohull sailing vessel.

(a) A monohull sailing vessel may undergo a simplified stability proof test in accordance with § 178.330 of this title in the presence of a Coast Guard marine inspector.

(b) A sailing vessel that operates on partially protected waters must be equipped with a self-bailing cockpit.

(c) The Commanding Officer, Marine Safety Center may prescribe additional or different stability requirements for a broad, shallow draft vessel with little or no ballast outside the hull.

91. In § 178.330, revise paragraphs (a), (b), and (d)(6), and add paragraph (d)(7), to read as follows:

§ 178.330 Simplified stability proof test (SST).

(a) A vessel must be in the condition specified in this paragraph when a simplified stability proof test is performed.

(1) The construction of the vessel is complete in all respects.

(2) Ballast, if necessary, is in compliance with § 178.510 and is on board and in place.

(3) Each fuel and water tank is approximately three-quarters full.

(4) A weight equal to the total weight of all passengers, crew, and variable loads permitted on the vessel is on board and distributed so as to provide normal operating trim and to simulate the vertical center of gravity, causing the least stable condition that is likely to occur in service. The assumed average weight per person of passengers and crew must be representative of the passengers and crew on board the vessel while engaged in the service intended. Unless the cognizant OCMI permits or requires the use of other values in writing, weight and vertical center of gravity are to be assumed as follows:

(i) The weight of primary lifesaving equipment should be simulated at its normal location, if not on board at the time of the test.

(ii) The assumed average weight per person is determined as provided by § 170.090 of this title.

(iii) The weight and associated vertical center of gravity of variable loads must be included as appropriate for the service intended and documented in the stability information required by subpart B of this part.

(iv) The vertical center for the total test weight must be at least 30 inches (760 millimeters) above the deck for seated passengers, and at least 39 inches (1.0 meter) above the deck for standing passengers.

(v) If the vessel carries passengers on diving excursions, the total weight of diving gear must be included in the loaded condition and placed in its stowed position. Not less than 80 pounds (36.3 kilograms) should be assumed for each person for which diving gear is provided.

(vi) On vessels having one upper deck above the main deck available to passengers, the weight distribution must not be less severe than the following:

Total Test Weight (W) = ____
Passenger Capacity of Upper Deck: ____
Weight on Upper Deck = (Number of Passengers on Upper Deck) × (Wt per Passenger) × 1.33
Weight on Main Deck = Total Test Weight − Weight on Upper Deck

(5) All non-return closures on cockpit scuppers or on weather deck drains must be kept open during the test.

(b) A vessel must not exceed the limitations in paragraph (d) of this section, when subjected to the greater of the following heeling moments:

$M_p = (W)(B_p)/6$; or,
$M_w = (P)(A)(H)$

Where:

M_p = passenger heeling moment in foot-pounds (kilogram-meters);
W = the total weight of persons other than required crew, plus the personal effects of those persons expected to be carried while aboard the vessel (total test weight) in pounds (meters);
B_p = the maximum transverse distance in feet (meters) of a deck that is accessible to passengers;
A = Area, in square feet (square meters), of the projected lateral surface of the vessel above the waterline (including the hull, superstructure, cargo, masts, area bounded by railings and canopies, but not protruding fixed objects such as antennas or running rigging).

* * * * *

(d) * * *

(6) On a non-sailing flush deck catamaran that is propelled by mechanical means, not more than one-third of the freeboard or one-third of the draft, whichever is less, may be immersed.

(7) In no case may the angle of heel exceed 14 degrees.

* * * * *

92. Revise § 178.340 to read as follows:

§ 178.340 Pontoon Simplified Stability Proof Test (PSST).

(a) A multihull pontoon vessel meeting the applicability requirements of § 178.330(b) and (e) must be in the condition described in § 178.330(a) of this part when the simplified stability test is performed, except that fuel and water tanks should be filled to 100% capacity. Any sewage tanks should be empty or full. If sewage tanks are empty, the weight of full sewage tanks should be simulated by use of additional stationary weight.

(b) A multihull pontoon vessel must not exceed the limitations in paragraph (c) of this section when subjected to the greater of the following heeling moments:

$M_{pc} = (W)(B_p - K)/2$; or,
$M_w = (P)(A)(H)$

Where:

M_{pc} = passenger and crew heeling moment in foot-pounds (kilogram-meters);
W = the total weight of persons aboard (total test weight) in pounds (kilograms);
B_p = the maximum transverse distance of the deck accessible to passengers in feet (meters);
K = 2.0 feet (0.61 meters);

M_w = Wind heeling moment in foot-pounds (kilogram-meters)

P = Wind pressure of 7.5 pounds/square foot (36.6 kilograms/square meter);

A = Area, in square feet (square meters), of the projected lateral surface of the vessel above the waterline (including the hull, superstructure, cargo, masts, area bounded by railings and canopies, but not protruding fixed objects such as antennas or running rigging); and

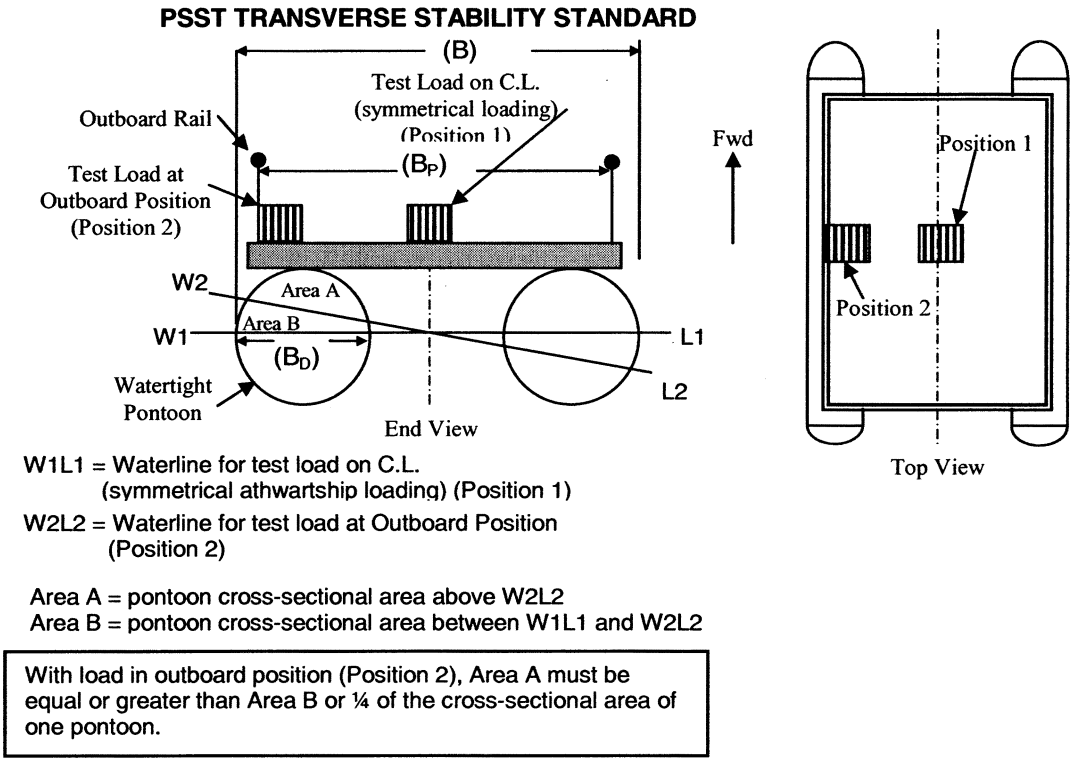
H = Height, in feet (meters), of the center of area (A) above the waterline, measured up from the waterline.

(c) With the appropriate heeling moment applied to the most adversely affected side of the vessel, the remaining exposed cross sectional area of the hull, without consideration of the cross-structure area on that side, must be equal or greater than—

(1) The cross sectional area submerged due to the load shift (for an example, see Figure 178.340(d)(1)); and,

(2) One-quarter of the cross-sectional area on one hull.

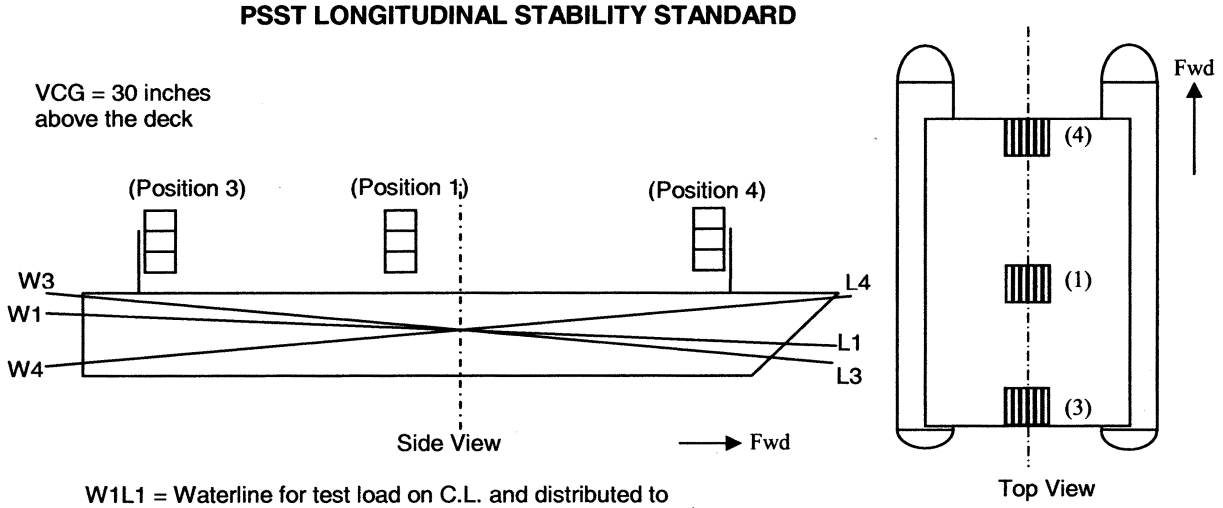
Figure 178.340(d)(1)



(d) A multihull vessel must also be tested to determine whether trimming moments will submerge the bow or stern of the buoyant hull. The top of any buoyant hull must not be submerged at any location, as indicated in Figure 178.340(d)(2), with the total test weight (W) located on the centerline and positioned as far forward or aft on the deck as practicable, whichever position results in the least freeboard.

Figure 178.340(d)(2)

PSST LONGITUDINAL STABILITY STANDARD



W1L1 = Waterline for test load on C.L. and distributed to reproduce operating trim of the vessel. (Position 1)
W3L3 = Test weight moved to the extreme aft position from Position 1. (Position 3)
W4L4 = Test weight moved to the extreme forward position from Position 1. (Position 4)

With the test load at the extreme aft position (Position 3) and at the extreme forward position (Position 4), the top of the pontoon must not be submerged.

PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

93. The authority citation for part 179 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

94. Add new § 179.15 to subpart A to read as follows:

§ 179.15 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm1*. It is also available for inspection at the Coast Guard, Office of Design Engineering Standards, Naval Architecture Division (CG–5212), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources listed in paragraph (b) of this section.

(b) International Maritime Organization (IMO), International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(1) International Convention for the Safety of Life at Sea (SOLAS), 1974, and its Protocol of 1988: articles, annexes and certificates, as amended, chapter II–1 (SOLAS chapter II–1), incorporation by reference approved for § 179.212.

(2) [Reserved]

95. Revise § 179.212 to read as follows:

§ 179.212 Watertight bulkheads for subdivision.

(a) Each passenger vessel of not greater than 65 feet (19.8 meters) in length must comply with paragraph (b) of this section if it:

(1) Carries more than 49 passengers; or,

(2) Is constructed of wood on or after March 11, 2001, and operates in cold water.

(b) Except as provided in paragraph (d) of this section, each passenger vessel to which paragraph (a) of this section applies must comply with:

(1) The Type II subdivision requirements of §§ 171.070 through 171.073 in subchapter S of this chapter, if the vessel complies with either of the following:

(i) Applicable intact stability requirements contained in subchapter S of this title; or,

(ii) Another stability standard determined by the Commanding Officer, Marine Safety Center; or,

(2) Section 179.220 of this part, if the vessel undergoes a simplified stability proof test in accordance with § 178.330 of this title.

(c) Except as provided in paragraph (d) of this section, each passenger vessel of greater than 65 feet (19.8 meters) in length, or a vessel constructed before 1 January 2009 that is certificated to carry more than 12 passengers on an international voyage, must comply with the Type II subdivision requirements of §§ 171.070 through 171.073 in subchapter S of this chapter.

(d) Each passenger vessel constructed on or after January 1, 2009, and issued a SOLAS Passenger Ship Safety Certificate, must meet the applicable requirements of SOLAS chapter II–1 (incorporated by reference; see § 179.15) instead of the requirements of paragraph (b) or (c) of this section. For the purposes of this section, the applicable requirements of SOLAS chapter II–1 are equivalent to the requirements of paragraph (b) or (c) of this section.

96. In § 179.220—

a. In table 179.220(a) and in note 1 to table 179.220(a), remove the term ''d'' wherever it occurs and, in its place, add the term ''x''; and,

b. Add paragraph (c) to read as follows:

§ 179.220 Location of watertight bulkheads for subdivision.

* * * * *

(c) Calculations needed to demonstrate compliance with paragraphs (a) and (b) of this section must be submitted to, and approved by, the Commanding Officer, Marine Safety Center.

PART 185—OPERATIONS

97. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

98. In § 185.304, revise paragraph (a)(3) and add paragraph (b) to read as follows:

§ 185.304 Navigation underway.

(a) * * *

(3) Prevailing and forecasted visibility and environmental conditions, including wind and waves;

* * * * *

(b) Masters of vessels not greater than 65 feet (19.8 meters) in length must have means available, satisfactory to the OCMI, to obtain or monitor the latest marine broadcast in order to comply with the requirements of paragraph (a) of this section.

99. In § 185.315, designate the existing paragraph as paragraph (a) and add paragraph (b) to read as follows:

§ 185.315 Verification of vessel compliance with applicable stability requirements.

(a) * * *

(b) In order to fulfill the requirements of paragraph (a) of this section and avoid overloading the vessel, the master must take into account the total weight of passengers, crew, and variable loads.

§ 185.602 [Amended]

100. Amend § 185.602 as follows:

a. In paragraph (b) introductory text, remove the words ''that fits into any one of the following categories:'' and add, in their place, the words ''to which § 178.310(a)(2) of this title applies.'';

b. Remove paragraphs (b)(1) through (b)(3); and

c. In paragraph (c), remove the words ''that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter or in accordance with § 178.310 of this chapter,''.

Dated: August 4, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard Assistant Comandant for Marine Safety, Security and Stewardship.

[FR Doc. E8–18791 Filed 8–19–08; 8:45 am]

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Federal Register

Wednesday,
August 20, 2008

Part III

Department of the Treasury

26 CFR Part 1

Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f); Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209006–89]

RIN 1545–AM97

Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 367(a), 367(a)(5), 367(b), 1248(a), 1248(e), 1248(f), and 6038B of the Internal Revenue Code (Code). The proposed regulations under sections 367(a)(5) and 367(b) apply when a domestic corporation transfers certain property to a foreign corporation in an exchange described in section 361(a) or (b). The proposed regulations under section 1248(e) suspend the application of section 1248(e) when capital gains are taxed at a rate equal to or greater than the rate at which ordinary income is taxed. The proposed regulations under section 1248(f) apply when a domestic corporation distributes stock of certain foreign corporations in a distribution to which section 337, 355, or 361 applies. The proposed regulations under section 1248(f) include regulations described in Notice 87–64 (1987–2 CB 375). The proposed regulations under section 6038B establish reporting requirements for certain transfers of property by a domestic corporation to a foreign corporation in certain exchanges described in section 361(a) or (b). Finally, the proposed regulations under section 367(a) include the regulations described in Notice 2008–10 (2008–3 IRB 277).

The proposed regulations included in this document affect domestic corporations that transfer property to foreign corporations in certain transactions, or that distribute the stock of certain foreign corporations, and certain shareholders of such domestic corporations. The proposed regulations are necessary, in part, to provide guidance on changes to the law made by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342).

DATES: Written or electronic comments and requests for a public hearing must be received by November 18, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–209006–89), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–209006–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–209006–89).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Daniel McCall, (202) 622–3860; concerning submissions of comments, requests for a public hearing, and/or to be placed on the building access list to attend a hearing, Richard Hurst (*Richard.A.Hurst@irscounsel.treas.gov*), or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by October 20, 2008.

Comments are requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application or automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in these proposed regulations are in §§ 1.367(a)–7(c)(4) and (5); 1.1248(f)–2(b)(1) and (c)(1); and 1.6038B–1(c)(6). The collections of information are mandatory. The likely respondents are domestic corporations.

Estimated total annual reporting burden: 3260.

Estimated average annual burden hours per respondent: 10.69.

Estimated number of respondents: 305.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and 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.

Background

This document contains proposed amendments to 26 CFR part 1 under sections 367(a), 367(a)(5), 367(b), 1248(a), 1248(e), 1248(f), and 6038B of the Code.

Section 367(a)(1) generally provides that if a United States person transfers property to foreign corporation in connection with an exchange described in section 332, 351, 354, 356, or 361, then the foreign corporation shall not be considered a corporation for purposes of determining the extent to which the United States person recognizes gain on the transfer. Sections 367(a)(2) and 367(a)(3), respectively, provide exceptions to the general rule of section 367(a)(1) for transfers of stock or securities of a foreign corporation that is a party to the exchange or a party to the reorganization, and for certain property used in an active foreign trade or business. However, section 367(a)(5) provides that, except to the extent provided in regulations, the exceptions to the general rule of section 367(a)(1) provided by section 367(a)(2) and (a)(3) do not apply to a transfer of property by a domestic corporation to a foreign corporation in an exchange described in section 361(a) or (b).

Section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to

the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. A fundamental policy of section 367(b) is to preserve the potential application of section 1248 following the acquisition of the stock or assets of a foreign corporation by another foreign corporation. H.R. Rep. No. 94–658, at 242 (1975).

Section 367(c)(1) provides that for purposes of section 367, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

Section 1248(a) provides that a United States person shall include in gross income as a dividend any gain recognized on the sale or exchange of stock of a foreign corporation that was a controlled foreign corporation (CFC) (as defined in section 957(a)) at any time during the five-year period ending on the date of the sale or exchange but only if the United States person owned (or is considered to have owned, within the meaning of section 958) 10 percent or more of the total combined voting power of the foreign corporation at any time during that five-year period (a section 1248 shareholder). The amount of the gain recognized by the United States person on the sale or exchange that is recharacterized as a dividend is limited to the earnings and profits of the foreign corporation, and of certain foreign subsidiaries of such corporation, attributable to the stock sold or exchanged that were accumulated in taxable years of the foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by the United States person while the foreign corporation was a CFC.

Section 1248(e) provides that, except as provided in regulations, if a United States person sells or exchanges stock of a domestic corporation that was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations, such sale or exchange shall be treated for purposes of section 1248 as a sale or exchange of the stock of the foreign corporations held by the domestic corporation.

Section 1248(f)(1) provides that, except as provided in regulations, a domestic corporation that distributes stock of a foreign corporation in a distribution to which section 311(a), 337, 355(c)(1), or 361(c)(1) applies, shall include in gross income as a dividend an amount equal to the excess of the fair market value of such stock over its adjusted basis, but only to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by the domestic corporation while the foreign corporation was a CFC.

Explanation of Provisions

A. Section 367(a)(5)

1. Overview

As noted in the Background part of this preamble, section 367(a)(2) and (3) provide exceptions to the general rule of section 367(a)(1). Section 367(a)(2) provides that, except to the extent provided in regulations, section 367(a)(1) shall not apply to the transfer of stock or securities of a foreign corporation that is a party to the exchange or a party to the reorganization. Section 367(a)(3) provides that, except to the extent provided in regulations, section 367(a)(1) shall not apply to the transfer of property used in an active foreign trade or business. Sections 1.367(a)–2T and § 1.367(a)–3, along with other related provisions, implement the exceptions in section 367(a)(2) and (a)(3). In addition, section 367(a)(6) grants the Secretary authority to promulgate regulations providing additional exceptions to the general rule of section 367(a)(1).

Section 367(a)(5) provides that the exceptions to the general rule of section 367(a)(1) provided under section 367(a)(2) and (3) shall not apply in the case of a transfer of property by a domestic corporation (U.S. transferor) to a foreign corporation (foreign acquiring corporation) in an exchange described in section 361(a) or (b) (section 361 exchange). The general rule under section 367(a)(5), therefore, is that a transfer of property by a U.S. transferor to a foreign acquiring corporation in a section 361 exchange is subject to the general rule of section 367(a)(1). In that case, the U.S. transferor recognizes gain with respect to the transfer of appreciated property in the section 361 exchange. See section 367(a)(1) and the regulations under that section.

Section 367(a)(5), however, further provides that subject to such basis adjustments and such other conditions as shall be provided in regulations the general rule of section 367(a)(5) shall not apply (and therefore the exceptions to the general rule of section 367(a)(1) may be available) if the U.S. transferor is controlled (within the meaning of section 368(c)), by five or fewer domestic corporations. For purposes of the control requirement, members of the same affiliated group (within the meaning of section 1504) are treated as a single corporation. The legislative history to section 367(a)(5) explains that regulations are expected to provide relief from the general rule only if the ''U.S. corporate shareholders in the transferor agree to take a basis in the stock they receive in a foreign corporation that is a party to the reorganization equal to the lesser of (a) the U.S. corporate shareholders' basis in such stock received pursuant to section 358, or (b) their proportionate share of the basis in the assets of the transferor corporation transferred to the foreign corporation.'' S. Rep. No. 100–445, at 62 (1988).

The legislative history explains that ''the requirement that five or fewer domestic corporations own at least 80 percent of the U.S. transferor's stock assures that the bulk of the built-in gain [in the transferred property] remains subject to U.S. taxing jurisdiction.'' The legislative history further states that ''it is expected that regulations [issued under section 367(a)(5)] will require the U.S. corporate transferor to recognize immediately any built-in gain that does not remain subject to U.S. taxing jurisdiction by virtue of a substituted stock basis.'' For example, the U.S. transferor would recognize gain ''where 20 percent or less of the U.S. corporate transferor is owned by foreign shareholders who receive substituted basis stock in the transferee corporation, which stock would not be subject to U.S. taxing jurisdiction on disposition.'' The U.S. transferor would also recognize gain to the extent each controlling domestic corporate shareholder does not receive an amount of stock of the issuing corporation in the reorganization sufficient to preserve its share of the built-in gain in the property transferred by the U.S. transferor in the section 361 exchange.

2. Explanation of Proposed Regulations

The proposed regulations confirm the general rule of section 367(a)(5), but provide an elective exception to the general rule pursuant to which the exceptions provided by section 367(a) and the regulations under that section may be available.

(a) General Rule of Section 367(a)(5)

Consistent with section 367(a)(5), the proposed regulations confirm that the exceptions to the general rule of section 367(a)(1) provided in section 367(a) generally are not available to a transfer of property by a U.S. transferor to a foreign acquiring corporation in a

section 361 exchange. As noted, under the general rule of section 367(a)(5), section 367(a)(1) would require the U.S. transferor to recognize gain on the transfer of appreciated property to the foreign acquiring corporation in the section 361 exchange. This general rule applies even if the conditions and requirements for the application of such exceptions would otherwise be met. The proposed regulations clarify that the general rule of section 367(a)(5) applies to a transfer of property pursuant to an exchange described in section 351 (section 351 exchange) that qualifies as both a section 351 exchange and a section 361 exchange. See Notice 2008–10, 2008–3 IRB 277.

(b) Elective Exception to the General Rule

The proposed regulations provide an elective exception to the general rule of section 367(a)(5) if certain conditions and requirements are satisfied (discussed in parts A.2.b.i through v of this preamble). If the exception applies, then the exceptions to the general rule of section 367(a)(1) provided in section 367(a) and the regulations under that section are available to the transfer of property by the U.S. transferor to the foreign acquiring corporation in the section 361 exchange, subject to any conditions and requirements for the application of such exceptions. In addition, even if the exception provided by the proposed regulations applies, the U.S. transferor may still recognize gain on the section 361 exchange in certain circumstances (discussed in part A.2.b.ii of this preamble), including any gain otherwise required to be recognized under section 367(a). See, for example, section 367(a)(3)(B) and (C).

The conditions and requirements of the elective exception carry out the policy of section 367(a)(5) by ensuring that the exceptions to the general rule of section 367(a)(1) are available only to the extent the net built-in gain in certain property transferred by the U.S. transferor in the section 361 exchange remains subject to corporate-level taxation in the hands of the controlling domestic corporate shareholders of the U.S. transferor through their ownership of stock received in the transaction. References to ''stock received'' in this preamble include stock deemed received in the transaction.

The proposed regulations apply to all property transferred by the U.S. transferor in the section 361 exchange, other than property to which section 367(d) applies (section 367(d) property). But see part D.2 of this preamble regarding proposed regulations under section 367(a) that require section 367(d) property to be treated as property to which section 367(a) applies (section 367(a) property) in transactions that may be eligible for the exception to the coordination rule of § 1.367(a)–3(d)(2)(vi)(A) provided by § 1.367(a)–3(d)(2)(vi)(B)(*1*). For purposes of these proposed regulations, section 367(a) property includes any property transferred by the U.S. transferor in the section 361 exchange (other than section 367(d) property), whether the property is appreciated (built-in gain property) or depreciated (built-in loss property) at the time of the section 361 exchange. The proposed regulations preserve (or require the recognition of) the net built-in gain in the section 367(a) property transferred in the section 361 exchange (generally defined as ''inside gain'' by the proposed regulations). In this regard, a transfer of section 367(a) property pursuant to a section 361 exchange to which the elective exception applies is treated differently than a transfer of built-in gain property and built-in loss property by a U.S. person to a foreign corporation in a section 351 exchange that is not also a section 361 exchange. In the latter transaction, only the built-in gain property would be subject to section 367(a)(1), and the U.S. transferor would be required to recognize gain with respect to such property without offsetting the gain with losses related to the built-in loss property.

The proposed regulations contain an anti-stuffing rule pursuant to which any property that would otherwise constitute section 367(a) property shall not be considered section 367(a) property for purposes of any determination under the proposed regulations for which the amount of section 367(a) property is relevant, if the U.S. transferor acquires such property in connection with the section 361 exchange with a principle purpose of affecting any such determination (for example, inside gain and inside basis). This rule may apply, for example, if the U.S. transferor acquires built-in loss property or cash proceeds from indebtedness incurred in connection with the transaction.

The conditions and requirements for the application of the exception provided by the proposed regulations ensure that, in the aggregate, the inside gain is recognized currently by the U.S. transferor or preserved for future taxation in the stock received in the transaction by the controlling domestic corporate shareholders of the U.S. transferor. If the entire inside gain is preserved in the stock received by the controlling domestic corporate shareholders, the basis adjustment required by the exception (discussed in part A.2.b.iii of this preamble) effectively results in the section 361 exchange being treated similarly to a transfer of the section 367(a) property in a section 351 exchange insofar as, in the aggregate, the controlling domestic corporate shareholders' adjusted basis in the stock received in the transaction generally would reflect the aggregate bases of the section 367(a) property and the net built-in gain in such property on the date of the section 361 exchange.

The inside gain equals the amount by which the aggregate gross fair market value of the section 367(a) property transferred by the U.S. transferor in the section 361 exchange exceeds the sum of the aggregate bases of such property and a proportionate amount of any liabilities of the U.S. transferor assumed in the section 361 exchange or satisfied in the reorganization pursuant to section 361(c)(3), but only to the extent the payment of any such liability would give rise to a deduction (deductible liabilities). For this purpose, gross fair market value means fair market value determined without regard to mortgages, liens, pledges, or other liabilities. However, the fair market value of any property subject to nonrecourse indebtedness shall not be less than the amount of such indebtedness. In addition, the aggregate bases of the section 367(a) property is determined after taking into account any gain otherwise required to be recognized by the U.S. transferor under section 367(a). See, for example, section 367(a)(3)(B) and (C). The proposed regulations provide rules for determining the proportionate amount of any deductible liabilities taken into account in determining the inside gain. The IRS and Treasury Department believe that taking deductible liabilities into account in determining inside gain comports with the policy of section 367(a)(5) to protect the corporate tax base following the repeal of the ''General Utilities'' doctrine, insofar as the U.S. transferor would have received the benefit of any deductible liabilities if it had disposed of its assets in a taxable transaction in which the deductible liabilities were assumed by the acquirer.

In determining the inside gain, the IRS and Treasury Department declined to consider attributes (for example, net operating losses and foreign tax credits) of the U.S. transferor other than the tax bases of the section 367(a) property and deductible liabilities allocable to section 367(a) property. These attributes are not considered for this purpose because of concerns regarding the complexity for determining how any limitations on the use of such attributes should be taken into account and the potential for

duplicating the benefit of such attributes. Comments are requested regarding whether and how other attributes of the U.S. transferor should be taken into account for determining inside gain.

If the section 361 exchange is part of a divisive reorganization described in section 368(a)(1)(D) in which the U.S. transferor distributes the stock of the foreign acquiring corporation in a distribution to which section 355 applies (section 355 distribution) and, as part of a plan or series of related transactions, such stock is subsequently distributed in one or more section 355 distributions, in addition to the conditions discussed in parts A.2.b.i through v of this preamble, two additional conditions must be satisfied. First, each section 355 distribution must be to a member of the affiliated group (within the meaning of section 1504) that includes the U.S. transferor at the time of the 361 exchange. Second, each affiliated group member that receives stock of the foreign acquiring corporation in the final section 355 distribution must adjust the basis of the stock received (as determined under section 358 and the regulations under that section) as required by the proposed regulations (discussed in part A.2.b.iii of this preamble). These two additional conditions ensure that the amount of inside gain attributable to the U.S. transferor's controlling domestic corporate shareholders remains subject to corporate-level taxation following the final section 355 distribution and permit section 355 distributions of the stock of the foreign acquiring corporation within an affiliated group.

(i) Control Requirement

At the time of the section 361 exchange, the U.S. transferor must be controlled (within the meaning of section 368(c)) by five or fewer, but at least one, domestic corporations (the control group). For this purpose, members of the same affiliated group (within the meaning of section 1504) are treated as one corporation. If the U.S. transferor is controlled (within the meaning of section 368(c)) by more than five domestic corporations, but some combination of five or fewer domestic corporations control the U.S. transferor within the meaning of section 368(c), the U.S. transferor must designate the five or fewer domestic corporations that comprise the control group on Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation.''

Although a regulated investment company (as defined in section 851(a)) (RIC), a real estate investment trust (as defined in section 856(a)) (REIT), and a subchapter S corporation (as defined in section 1361(a)) is each generally treated as a domestic corporation for purposes of the Code, such entities are not generally subject to corporate-level taxation. Therefore, the proposed regulations provide that these entities cannot be members of the control group.

The proposed regulations confirm that because the stock ownership threshold for the control requirement is determined by reference to section 368(c), only direct ownership of the stock of the U.S. transferor is taken into account. The IRS and Treasury Department declined to exercise the authority under section 367(a)(6) to permit indirect ownership (through a partnership or other entity) to be taken into account for this purpose, in part, because of the complexity and administrative difficulties that would arise from the basis adjustments (discussed in part A.2.b.iii of this preamble) that would be needed to account for the intervening partnership or other entity. For example, in the case of indirect ownership through a partnership, basis adjustments would need to account for differences between a partner's basis in its partnership interest and the partnership's basis in the stock of the U.S. transferor. Comments are requested regarding the manner in which indirect ownership could be taken into account for this purpose without undue complexity.

(ii) Gain Recognition by U.S. Transferor

Even if the exception provided by the proposed regulations applies, in two instances the U.S. transferor must recognize gain on the transfer of section 367(a) property in the section 361 exchange. This is the case even if an exception to the general rule of section 367(a)(1) would otherwise apply to such transfer.

First, the U.S. transferor must recognize gain equal to the aggregate amount of inside gain allocable to non-control group members. The inside gain is allocated among control group members and non-control group members based on each shareholder's ownership interest (by value) in the U.S. transferor at the time of the section 361 exchange. The U.S. transferor must recognize gain with respect to non-control group members even if the entire inside gain could be preserved in the stock received by the control group members as a group.

Second, the U.S. transferor must recognize gain to the extent any control group member cannot preserve its share of inside gain in the stock received that is allocable to the section 367(a) property transferred in the section 361 exchange. The amount of a control group member's share of inside gain that cannot be preserved in the stock received is the amount by which the control group member's share of inside gain exceeds the fair market value of the stock received by the control group member that is allocable to section 367(a) property. Gain is required to be recognized in such a case because the fair market value of the stock equals the maximum amount of the control group member's share of inside gain that can be preserved in such stock (if the basis of such stock were zero). Under this rule, stock received that is allocable to property other than section 367(a) property is not available to preserve any portion of the control group member's share of inside gain. The U.S. transferor may be required to recognize gain under this rule when, for example, non-qualifying property (property other than stock or securities permitted to be received under section 361(a)) is received or when the foreign acquiring corporation assumes certain liabilities of the U.S. transferor in the section 361 exchange.

The proposed regulations provide rules for determining the portion of the stock received by a control group member that is attributable to section 367(a) property that are consistent with general tax principles, including Rev. Rul. 68–55, 1968–1 CB 140, and the authorities cited therein. Under these rules, stock received by a control group member is allocated between the aggregate section 367(a) property and all other property transferred in the section 361 exchange based on relative gross fair market value.

The U.S. transferor must recognize gain with respect to any control group member that cannot preserve its entire share of inside gain in the stock received in the transaction even if the control group members' aggregate share of inside gain can be preserved in the stock received by the control group members as a group. For example, assume that the U.S. transferor is wholly owned by two domestic corporations (US1 and US2) and that each control group member's share of inside gain is $40x. If in the transaction US1 received stock with a value of $30x and $20x of non-qualifying property, the U.S. transferor would recognize $10x gain with respect to US1, even if US2 received sufficient stock to preserve $50x gain (the sum of US2's $40x share of inside gain and the portion of US1's share of inside gain ($10x) that cannot be preserved in the stock received by US1).

(iii) Adjustments To Basis of Stock Received by Control Group Members

Under the proposed regulations, each control group member's basis in the stock received in the transaction as determined under section 358 and the regulations under that section (section 358 basis) that is allocable to the section 367(a) property transferred by the U.S. transferor in the section 361 exchange is reduced to the extent necessary to preserve the control group member's share of inside gain. As a general matter, if the U.S. transferor must recognize gain with respect to a control group member because the control group member's entire share of inside gain cannot be preserved in the stock received by the control group member in the transaction (see part A.2.b.ii of this preamble), the control group member's section 358 basis in the stock received that is attributable to section 367(a) property is reduced to zero.

Only the basis of stock received by the control group member that is attributable to section 367(a) property transferred in the section 361 exchange is reduced (for example, the basis of stock attributable to section 367(d) property is not reduced). The reduction to a control group member's section 358 basis in the stock received that is attributable to section 367(a) property equals the amount, if any, by which the control group member's share of inside gain (reduced by the amount of any gain recognized by the U.S. transferor with respect to the control group member (discussed in part A.2.b.ii of this preamble)) exceeds the built-in gain in such stock (outside gain). The outside gain is the amount by which the fair market value of such stock exceeds the section 358 basis of the stock (as determined before any required adjustment to such basis under the proposed regulations). The proposed regulations provide special rules that apply if the control group member holds more than one block of stock received in the transaction.

If the section 361 exchange is part of a divisive reorganization described in section 368(a)(1)(D) that is eligible for the exception (see part A.2.b of this preamble for additional conditions that must be satisfied in such a case), each affiliated group member that receives stock of the foreign acquiring corporation in the final section 355 distribution must reduce the section 358 basis of such stock to the same extent that the control group member that initially received the stock from the U.S. transferor would have reduced its section 358 basis in such stock. In such a case, the control group member that received the stock of the foreign acquiring corporation from the U.S. transferor is not required to reduce the section 358 basis of such stock.

A section 361 exchange that is subject to section 367(a)(5) may be part of a triangular reorganization in which the control group members receive stock of the corporation that controls the foreign acquiring corporation (the controlling corporation). In such a case, the proposed regulations require the control group members to adjust (if necessary) the section 358 basis of the stock of the controlling corporation (whether foreign or domestic) received in the transaction. The IRS and Treasury Department believe adjusting the basis of such stock to be appropriate even if the controlling corporation is domestic because the control group members' aggregate share of inside gain may not be preserved in the stock of the foreign acquiring corporation held by the controlling corporation in all cases. For example, liabilities assumed or incurred by the foreign acquiring corporation in connection with the transaction could reduce the amount of inside gain preserved in such stock. Moreover, even if the control group members' aggregate share of inside gain could be preserved in such stock, such an approach would shift the inside gain to the domestic controlling corporation, rather than to the control group members as intended by section 367(a)(5).

(iv) Agreement To Recognize Gain and File Amended Tax Return

The proposed regulations require the U.S. transferor to include a statement with its U.S. income tax return for the year of the section 361 exchange certifying that if the foreign acquiring corporation disposes of a significant amount of the section 367(a) property transferred in the section 361 exchange in one or more related transactions entered into with a principal purpose of avoiding the U.S. tax that would have been imposed on a sale of such property by the U.S. transferor at the time of the section 361 exchange, then the U.S. transferor (or the foreign acquiring corporation on behalf of the U.S. transferor) shall file a U.S. income tax return (or amended U.S. income tax return, as the case may be) for the year of the section 361 exchange reporting the gain realized but not recognized on the section 361 exchange. This requirement is intended to prevent the potential use of reorganizations subject to section 367(a)(5) to avoid the repeal of the ''General Utilities'' doctrine. Interest must be paid (determined under section 6621) on the amount of any additional tax due on such return. For this purpose, a disposition of a significant amount of the section 367(a) property occurs if the foreign acquiring corporation disposes of an amount of the section 367(a) property transferred in the section 361 exchange that is greater than forty percent of the fair market value of the section 367(a) property at the time of the section 361 exchange. Comments are requested regarding whether an exception from this rule should be provided for dispositions of section 367(a) property occurring in the ordinary course of business.

(v) Election and Reporting Requirements

To elect to apply the exception, the proposed regulations require the U.S. transferor and the control group members to enter into a written agreement to make such election on or before the due date for the U.S. transferor's timely-filed return for the taxable year in which the section 361 exchange occurs. Each party to the written agreement must also include a statement with its timely-filed return for the year of the section 361 exchange reporting the election and other specified information. If the section 361 exchange is part of a divisive reorganization described in section 368(a)(1)(D) that is eligible for the exception (see part A.2.b of this preamble for additional conditions that must be satisfied in such a case), each affiliated group member that receives stock of the foreign acquiring corporation in the final section 355 distribution must enter into the written agreement and include the reporting statement with its timely-filed return (instead of the control group member that initially received the stock of the foreign acquiring corporation from the U.S. transferor.) Relief for reasonable cause may be available for the failure to comply with the election and reporting requirements.

3. Special Entities

The proposed regulations apply to property transfers by U.S. transferors, including RICs, REITs, and subchapter S corporations. Comments are requested regarding whether and the extent to which the IRS and Treasury Department should exercise the authority under section 367(a)(6) to provide an exception from the general rule of section 367(a)(5) for a transfer of property by a RIC, a REIT, or a subchapter S corporation to a foreign corporation pursuant to a section 361 exchange.

B. Section 367(b)

1. Overview

Section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

A fundamental policy of section 367(b) is to preserve the potential application of section 1248 following certain section 367(b) exchanges. H.R. Rep. No. 94–658, at 242 (1975). Thus, if the potential application of section 1248 cannot be preserved immediately following the acquisition of the stock or assets of a foreign acquired corporation by a foreign acquiring corporation in a section 367(b) exchange, the final regulations (TD 8862) under section 367(b) issued on January 24, 2000 (2000 final regulations) require certain shareholders of the foreign acquired corporation to include in income as a dividend the section 1248 amount attributable to the stock of the foreign acquired corporation. See § 1.367(b)–4(b). For example, the inclusion in income of the section 1248 amount is required if the section 367(b) exchange results in the loss of section 1248 shareholder status or if the foreign acquired corporation or foreign acquiring corporation is not a CFC immediately after the section 367(b) exchange. See § 1.367(b)–4(b)(1)(i).

2. Outbound Asset Reorganizations—In General

The 2000 final regulations require a U.S. transferor that is a section 1248 shareholder of a foreign acquired corporation and that transfers the stock of such corporation to a foreign acquiring corporation in a section 361 exchange to include in income the section 1248 amount attributable to the stock of the foreign acquired corporation. The U.S. transferor must include the section 1248 amount in income even if the foreign acquiring corporation and the foreign acquired corporation are CFCs with respect to which the U.S. transferor is a section 1248 shareholder immediately after the section 361 exchange. See § 1.367(b)–4(b)(1)(iii), *Example 4.* Moreover, under section 1248(f)(1) the U.S. transferor generally would be required to include in income the section 1248 amount attributable to the stock of the foreign acquiring corporation distributed under section 361(c)(1). The section 1248 amount attributable to the stock of the foreign acquiring corporation would generally include the section 1248 amount attributable to the stock of the foreign acquired corporation. See generally § 1.1248–8.

The final regulations (TD 9243) under section 367(b) issued on January 26, 2006 (2006 final regulations) provided an exception to the general rule of § 1.367(b)–4(b)(1)(i) that applies in certain triangular reorganizations where the exchanging shareholder receives stock of a domestic corporation that controls the foreign acquiring corporation. This exception only applies, however, to a shareholder that exchanges stock of the foreign acquired corporation for stock of the domestic corporation in an exchange described under section 354 or 356. Thus, the exception provided by the 2006 final regulations does not apply where the U.S. transferor receives stock of a domestic controlling corporation for stock of a foreign acquired corporation in a section 361 exchange.

After studying the issue further and in response to comments received, the IRS and Treasury Department have determined that requiring the U.S. transferor to include the section 1248 amount in income may not be necessary in cases where the section 1248 amount attributable to the stock of the foreign acquired corporation can be preserved. Accordingly, the proposed regulations under section 367(b) included in this document provide an additional exception to the general rule of the 2000 final regulations that applies to certain transfers of stock of a foreign acquired corporation by a U.S. transferor to a foreign acquiring corporation in a section 361 exchange.

In such a case, the proposed regulations provide that the U.S. transferor must include in income the section 1248 amount attributable to the stock of the foreign acquired corporation only if immediately after the section 361 exchange the foreign acquiring corporation or the foreign acquired corporation is not a CFC with respect to which the U.S. transferor is a section 1248 shareholder. *Example 4* in § 1.367(b)–4(b)(1)(iii) is modified accordingly. The proposed regulations under section 1248(f) included in this document supplement this exception to ensure that the section 1248 amount can be preserved in the hands of a corporate section 1248 shareholder following the distribution of the stock of the foreign acquiring corporation by the U.S. transferor. See part C of this preamble for discussion of the proposed regulations under section 1248(f).

3. Special Rules for Outbound Triangular Asset Reorganizations

As noted, the 2000 final regulations also require the U.S. transferor to include in income the section 1248 amount attributable to stock of a foreign acquired corporation transferred to a foreign acquiring corporation in a section 361 exchange that is part of triangular asset reorganization, even if the corporation that controls the foreign acquiring corporation is domestic. The provisions of § 1.367(b)–13 (TD 9243) do not apply to preserve the section 1248 amount attributable to the stock of the foreign acquired corporation in such a case. The proposed regulations under section 367(b) included in this document, however, would provide an exception to the general rule of the final 2000 regulations in such triangular asset reorganizations.

If the controlling corporation is foreign, the exception applies if, immediately after the section 361 exchange, the foreign controlling corporation, the foreign acquiring corporation, and the foreign acquired corporation are CFCs with respect to which the U.S. transferor is a section 1248 shareholder. If the controlling corporation is domestic, the exception applies if, immediately after the section 361 exchange, the foreign acquired corporation is a CFC with respect to which the domestic controlling corporation is a section 1248 shareholder. In addition, in either case, the controlling corporation (foreign or domestic) must apply the principles of § 1.367(b)–13 to determine the adjustment to the basis of the stock of the foreign acquiring corporation (instead of the over-the-top basis adjustment rules of § 1.358–6) to ensure that the section 1248 amount attributable to the stock of the foreign acquired corporation at the time of the section 361 exchange is preserved in the stock of the foreign acquiring corporation immediately after the section 361 exchange. Under these principles, each share of stock of the foreign acquiring corporation would generally be divided into the portions necessary to preserve the pre-exchange section 1248 amounts attributable to the stock of the foreign acquired corporation and the foreign acquiring corporation, respectively. If the controlling corporation is foreign, the proposed regulations under section 1248(f) included in this document supplement this exception to ensure that the section 1248 amount can be preserved following the distribution of the stock of the foreign controlling corporation by the U.S. transferor to its shareholders.

C. Section 1248(f)

1. Overview

Section 1248(f)(1) provides that, except as provided in regulations, if a domestic corporation (domestic distributing corporation) that is a section 1248 shareholder with respect to a foreign corporation distributes the stock of such foreign corporation in a distribution described in section 311(a), 337, 355(c)(1), or 361(c)(1), then notwithstanding any other provisions of the Code, the domestic distributing corporation must include in income as a dividend the section 1248 amount attributable to such stock. Section 1248(f)(1) requires the inclusion of the section 1248 amount because the section 1248 amount attributable to the stock distributed may not be preserved in the hands of the distributee shareholders following the distribution. Section 1248(f)(1) does not apply to the extent the domestic distributing corporation otherwise recognizes gain on the distribution, in which case the gain recognized would be recharacterized as a dividend under section 1248(a), as appropriate.

Section 1248(f)(2), however, provides that section 1248(f)(1) shall not apply to a domestic distributing corporation's distribution of stock of a foreign corporation to a domestic corporation that is treated as holding the stock for the period during which the stock was held by the domestic distributing corporation and that, immediately after the distribution, is a section 1248 shareholder with respect to the foreign corporation. The legislative history explains that where ''the corporate distribute[e] does not receive a stepped up basis as a result of the distribution and* * *the potential for the future application of section 1248 still exists, it is not necessary to [apply section 1248(f)(1) to] override the nonrecognition provisions which otherwise apply to a corporate distribution.'' S. Rep. No. 94–938, at 270 (1976).

The legislative history provides that the Treasury Department may exercise the regulatory authority granted under section 1248(f)(1) to provide that, where section 1248(f)(2) does not otherwise apply, ''the recipient corporation may be required to take a carryover basis in the stock received (rather than a substituted basis under section 358, for example, in the case of a section 355 or 361 distribution) and section 1248(f)(1) will not apply to such distribution.'' S. Rep. No. 100–445, at 64 (1988).

In Notice 87–64 (1987–2 CB 375), the IRS and Treasury Department announced that, in the case of section 355 distributions of CFC stock, regulations under section 1248(f) may limit the application of section 1248(f)(1) to distributions in which the CFC is no longer a CFC after the distribution or in which one or more of the distributees are not United States shareholders (within the meaning of section 951(b)) of the CFC after the distribution. The notice further states that the regulations would ensure that, subsequent to a section 355 distribution of CFC stock that would not be subject to section 1248(f)(1) under the regulations, the amount of gain recognized from a disposition of the CFC stock that would be recharacterized as a dividend under section 1248(a) would include the earnings and profits attributable to the CFC stock under section 1248 as of the date of the section 355 distribution. To achieve this result, the notice provides that the regulations may require appropriate adjustments to the basis and holding period of the CFC stock received by one or more of the distributees.

2. General Rules

The proposed regulations under section 1248(f) included in this document provide that a domestic distributing corporation that is a section 1248 shareholder of a foreign corporation and that distributes stock of such foreign corporation in a distribution to which section 337 applies (section 337 distribution), shall generally include in income as a dividend the section 1248 amount attributable to the stock distributed.

The proposed regulations further provide that a domestic distributing corporation that is a section 1248 shareholder of a foreign corporation and that distributes stock of such foreign corporation in a section 355 distribution, other than stock received by the domestic distributing corporation in a section 361 exchange, shall generally include in income as a dividend the section 1248 amount attributable to the stock distributed. This rule applies, however, only to the extent the domestic distributing corporation does not otherwise recognize gain on the section 355 distribution, in which case the gain recognized would be recharacterized as a dividend under section 1248(a), as appropriate.

Finally, the proposed regulations provide that a domestic distributing corporation that is a section 1248 shareholder of a foreign distributed corporation and that distributes stock of such corporation received in a section 361 exchange, in a section 355 distribution or a distribution to which section 361 applies (section 361 distribution), shall, notwithstanding any other provision of the Code, include in income as a dividend the ''section 1248(f) amount'' attributable to the stock distributed. The section 1248(f) amount equals the aggregate amount that would be included in income as a dividend by the foreign distributed corporation under section 964(e) if, immediately after the section 361 exchange that preceded the section 355 distribution or section 361 distribution, the foreign distributed corporation sold the stock of each foreign corporation received in the section 361 exchange. This rule supplements the proposed regulations under section 367(b) which provide an exception to the general rule of § 1.367(b)–4(b)(1)(i) in certain cases where stock of a foreign acquired corporation is transferred by a U.S. transferor in a section 361 exchange.

3. Exceptions to the General Rules

The proposed regulations incorporate the statutory exception provided by section 1248(f)(2) for distributions that meet certain conditions. The proposed regulations also provide elective exceptions for section 355 distributions and section 361 distributions. The exceptions for such distributions are elective because applying the exceptions may reduce a corporate distributee's section 358 basis in the stock received in the distribution. The conditions of the exceptions carry out the policy of section 1248(f) by limiting the exceptions to distributions where the potential application of section 1248 and the relevant section 1248 amounts can be preserved following the distribution.

(a) Section 337 Distributions

The general rule will not apply to a section 337 distribution of the stock of a foreign corporation if immediately after the distribution the 80-percent distributee (described in section 337(c)) is a section 1248 shareholder with respect to the foreign corporation, the 80-percent distributee's holding period in the stock received in the distribution is the same as the domestic distributing corporation's holding period in such stock at the time of the distribution, and the 80-percent distributee's basis in the stock received in the distribution is not greater than the domestic distributing corporation's basis in such stock at the time of the distribution.

The IRS and Treasury Department believe the conditions should be satisfied in most section 337 distributions because of the application of sections 334 and 1223. However, comments are requested regarding any

cases where these conditions may not be met and whether the 80-percent distributee should be permitted to adjust the basis or holding period of the stock received so that the conditions can be met.

(b) Certain Section 355 Distributions

The proposed regulations provide an elective exception to the general rule for a section 355 distribution of stock of a foreign corporation not received by the domestic distributing corporation in a section 361 exchange to a domestic corporation that is a section 1248 shareholder with respect to the foreign corporation immediately after the distribution. The election to apply the exception is irrevocable and must be made by the domestic distributing corporation and all such section 1248 shareholders. If the election is made, adjustments may be made to each section 1248 shareholder's section 358 basis and holding period in the stock received to preserve the section 1248 amount attributable to such stock at the time of the distribution.

To apply the exception, the proposed regulations require the domestic distributing corporation and the section 1248 shareholders to enter into a written agreement on or before the due date (including extensions) of the domestic distributing corporation's tax return for the taxable year during which the section 355 distribution occurs. The proposed regulations also require the domestic distributing corporation and each section 1248 shareholder to include a statement with its tax return for the taxable year during which the distribution occurs reporting that the election to apply the exception has been made and any required adjustments to stock basis or holding period. Each party to the agreement must retain the original or a copy of the agreement as part of its records. The proposed regulations provide relief for reasonable cause for the failure to comply with the election and reporting requirement.

If the exception applies, two adjustments may be required with respect to each section 1248 shareholder. First, solely for purposes of section 1248, immediately following the distribution the section 1248 shareholder's holding period in the stock received in the distribution shall equal the domestic distributing corporation's holding period in such stock at the time of the distribution. Second, if the section 1248 amount attributable to the stock of the foreign corporation at the time of the distribution exceeds the section 1248 shareholder's postdistribution amount attributable to such stock (excess amount), the section 1248 shareholder's section 358 basis in such stock is reduced by the excess amount. The postdistribution amount is the section 1248 shareholder's section 1248 amount attributable to the stock received in the distribution, computed immediately after the distribution and taking into account the adjustment to the shareholder's holding period in such stock.

(c) Distributions Pursuant to a Plan of Reorganization

The proposed regulations provide an elective exception to the general rule for a section 355 distribution or section 361 distribution of stock of a foreign corporation received by the domestic distributing corporation in the section 361 exchange that precedes such distribution to a domestic corporation that is a section 1248 shareholder with respect to the foreign corporation immediately after the distribution. The election to apply the exception is irrevocable and must be made by the domestic distributing corporation and all such section 1248 shareholders. If the exception applies, adjustments may be made to each section 1248 shareholder's section 358 basis (as adjusted under the proposed regulations under section 367(a)(5)) and the amount of earnings and profits attributable to the stock received for purposes of section 1248 to preserve the section 1248(f) amount attributable to such stock at the time of the distribution.

To apply the exception, the proposed regulations require the domestic distributing corporation and the section 1248 shareholders to enter into a written agreement on or before the due date (including extensions) of the domestic distributing corporation's tax return for the taxable year during which the distribution occurs. The proposed regulations also require the domestic distributing corporation and each section 1248 shareholder to include a statement with its tax return for the taxable year during which the distribution occurs reporting that the election to apply the exception has been made and any required adjustments to stock basis or the amount of earnings and profits attributable to the stock received for purposes of section 1248. Each party to the agreement must include the original or a copy of the agreement as part of its records. The proposed regulations provide relief for reasonable cause for the failure to comply with the election and reporting requirements.

If the exception applies, two adjustments may be required with respect to each section 1248 shareholder. First, each share of stock of the foreign corporation received by the section 1248 shareholder is divided into portions attributable to each block of stock of a foreign acquired corporation transferred by the domestic distributing corporation in the section 361 exchange with respect to which the domestic distributing corporation was a section 1248 shareholder at the time of the section 361 exchange, and to all other property transferred by the domestic distributing corporation in the section 361 exchange. For example, if in the section 361 exchange the domestic distributing corporation transfers a block of stock in each of three foreign corporations with respect to which it is a section 1248 shareholder, then each share of stock of the foreign distributed corporation received by the section 1248 shareholder must be divided into three portions. Alternatively, if multiple blocks of stock in each of the three foreign corporations were transferred in the section 361 exchange, then each share of the stock of the foreign distributed corporation would be divided into additional portions to account for the additional blocks of stock transferred. The proposed regulations further provide that, for purposes of section 1248, the earnings and profits attributable to each block of stock of a foreign acquired corporation transferred in the section 361 exchange that results in a divided portion of a share of stock of the foreign acquiring corporation (or whole share, if no division is required) are attributable to such portion (or whole share, if no division is required) based on the section 1248 shareholder's ownership interest (by value) in the domestic distributing corporation at the time of the section 361 exchange.

Second, if the section 1248(f) amount attributable to a portion of a share (or whole share, if no division is required) of stock of the foreign distributed corporation received in the distribution exceeds the section 1248 shareholder's postdistribution amount attributable to such portion (or whole share) (excess amount), then the section 1248 shareholder's section 358 basis in such portion (or whole share, if no division is required), as adjusted under the proposed regulations under section 367(a)(5) (discussed in part A.2.b.iii of this preamble), is reduced by such excess amount. This adjustment ensures that the section 1248 shareholder's share of the section 1248 amount attributable to the stock of each foreign acquired corporation transferred in the section 361 exchange is preserved in the stock of the foreign distributed

corporation received by such shareholder in the distribution.

The IRS and Treasury Department declined to adopt rules that would not require the division of shares to preserve section 1248 amounts because such rules could inappropriately increase or decrease the section 1248 amount attributable to the stock of the foreign distributed corporation received by a section 1248 shareholder in the distribution. For example, if in the section 361 exchange the domestic distributing corporation transferred appreciated tangible property and stock of a CFC with earnings and profits for purposes of section 1248(a) in excess of the built-in gain in such stock, then the appreciation in the tangible property could inappropriately increase the section 1248 amount attributable to the stock of the foreign distributed corporation received by a section 1248 shareholder in the distribution (to the extent the CFC's earnings and profits exceed the section 1248 amount attributable to the CFC stock at the time of the section 361 exchange). A similar inappropriate increase would result if the domestic distributing corporation transferred appreciated stock of two CFCs in the section 361 exchange, one CFC without a section 1248 amount and the other CFC with a section 1248 amount but with earnings and profits for purposes of section 1248 in excess of such section 1248 amount.

The IRS and Treasury Department also declined to adopt rules that would preserve any reduction to a section 1248 shareholder's section 358 basis in a portion of a share (or whole share, if no division is required) of stock of the foreign distributed corporation received in the distribution by increasing the basis of other portions of the share (or other whole shares, if no division is required) of stock or by establishing a suspended basis account equal to the basis reduction. Those rules were not adopted because a capital loss would be created that could economically offset the section 1248 amount, which would not be consistent with the policy underlying section 1248(f) and the regulations described in Notice 87–64. S. Rep. No. 94–938, at 270 (1976).

Comments are requested on how the rules of the proposed regulations can be simplified and how the rules should apply to different classes of stock.

4. Section 964(e) and Inclusions Under Section 367(b)

Comments are requested regarding whether the IRS and Treasury Department should exercise the authority under section 367(b) to apply the principles of section 1248(f)(1) to section 355 distributions or section 361 distributions of stock of a foreign corporation by a CFC, to the extent the transaction does not otherwise result in an income inclusion to the exchanging shareholders of the CFC under section 367(b) and the regulations under that section. Comments should consider the appropriate balance between the policy of sections 1248(a) and 964(e) and the associated complexity and compliance burdens.

D. Changes to Exception to Coordination Rule of § 1.367(a)–3(d)(2)(vi)(A)

1. Overview

Section 1.367(a)–3(d)(2)(vi)(A) (the coordination rule) provides that if, in connection with an indirect stock transfer, a U.S. person transfers assets to a foreign corporation (direct asset transfer) in an exchange described in section 351 or section 361, the rules of section 367 and the regulations under that section shall first apply to the direct asset transfer and then to the indirect stock transfer. However, an exception to the coordination rule (coordination rule exception) provides that section 367(a) and (d) shall not apply to a direct asset transfer otherwise subject to the coordination rule to the extent that assets transferred by a domestic acquired corporation to a foreign acquiring corporation in an asset reorganization are re-transferred to a domestic corporation controlled by the foreign acquiring corporation (domestic controlled corporation), but only if the domestic controlled corporation's basis in the retransferred assets is not greater than the domestic acquired corporation's basis in such assets and other conditions are satisfied. See § 1.367(a)–3(d)(2)(vi)(B)(1).

The 2006 final regulations established the conditions for the application of the coordination rule exception. The preamble to the notice of proposed rulemaking that preceded the 2006 final regulations explained that the conditions were adopted to limit the use of asset reorganizations subject to the coordination rule that might facilitate inversion transactions and certain divisive transactions. See REG–125628–01 (issued January 5, 2005).

2. Clarification of Conditions for Application of the Coordination Rule Exception

In response to transactions intended to use the coordination rule exception inappropriately to repatriate earnings and profits of foreign corporations without the recognition of gain or a dividend inclusion, the IRS and Treasury Department issued Notice 2008–10 (2008–3 IRB 277). The notice announced that the conditions for the application of the coordination rule exception would be revised to clarify that any adjustment to basis required under section 367(a)(5) must be made to the basis of stock of the foreign acquiring corporation received by the control group members in the asset reorganization such that the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation is reflected in such stock. The notice clarifies that the control group members cannot satisfy the basis adjustment requirement by adjusting the basis of stock of the foreign acquiring corporation held before the reorganization. The notice further states that the revised regulations would confirm that to the extent the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation cannot be preserved in the stock received by the control group members in the reorganization, then the domestic acquired corporation's transfer of property to the foreign acquiring corporation shall be subject to section 367(a) and (d).

The proposed regulations included in this document incorporate, with modifications, the clarifications to the conditions for the application of the coordination rule exception announced in the notice. The proposed regulations also provide that to the extent any of the re-transferred assets constitutes section 367(d) property, the coordination rule exception shall apply only if the section 367(d) property is treated as section 367(a) property for purposes of satisfying the conditions and requirements of section 367(a)(5) and the regulations under that section. Thus, for example, any gain that the U.S. transferor must recognize on the direct asset transfer or any adjustment required to a control group member's section 358 basis in stock received in the transaction must take into account any inside gain attributable to section 367(d) property (treated as section 367(a) property for purposes of determining such inside gain) that is part of the re-transferred assets.

The IRS and Treasury Department continue to study transactions that have the effect of repatriating earnings and profits of foreign corporations without the recognition of gain or a dividend inclusion. Temporary regulations were recently issued (TD 9400 and TD 9402) under sections 367(b) and 956(e) to address the inappropriate use of certain cross-border triangular reorganizations

and other nonrecognition transactions to repatriate earnings and profits of a foreign corporation without the recognition of gain or a dividend inclusion. The IRS and Treasury Department are evaluating other transactions that have a similar effect to determine whether guidance is appropriate. In particular, the IRS and Treasury Department are analyzing whether it is appropriate for the gain limitation rule of section 356(a)(1) to apply in an acquisitive asset reorganization involving a foreign acquiring corporation, considering that a policy of section 367(b) is ''to protect against tax avoidance in transfers to foreign corporations and upon the repatriation of previously untaxed foreign earnings.'' H.R. Rep. No. 94–658 (1975). Comments are requested in this regard, including whether the application of any such guidance should be limited to cases where section 356(a)(2) would otherwise apply to the shareholder's receipt of non-qualifying property.

The IRS and Treasury Department also continue to study whether appropriate modifications should be made to the ''all earnings and profits'' inclusion requirement of § 1.367(b)–3(b) when a domestic corporation acquires the assets of a foreign corporation pursuant to an acquisitive asset reorganization under section 368(a)(1) and then transfers all or part of the acquired assets to another foreign corporation in a transaction described in § 1.368–2(k). Comments are requested in this regard, including regarding the appropriate adjustment to the domestic corporation's basis in the stock of the foreign corporation to which the acquired assets are transferred to ensure that the basis of such stock reflects an after-tax amount.

E. Other Proposed Regulations Under Section 367(a)

The proposed regulations under section 367(a) would revise current § 1.367(a)–1T(b)(4)(i)(B) to provide that an increase to basis for the amount of gain recognized by a U.S. person under section 367(a) in connection with a transfer of property to a foreign corporation is allocated among the transferred property with respect to which gain is recognized in proportion to the gain realized by the U.S. person on the transfer of such property. The IRS and Treasury Department believe the current temporary regulation may produce inappropriate results because it allocates the basis increase among the transferred property with respect to which gain is recognized in proportion to the amount realized by the U.S. person on the transfer of such property.

The proposed regulations also clarify that a transfer of property by a U.S. person to a foreign corporation that is subject to section 367(a) is not recharacterized for U.S. Federal tax purposes merely because the U.S. person is required to recognize gain in connection with such transfer under section 367(a). For example, if a U.S person transfers appreciated stock of a CFC to another CFC in a section 351 exchange, the section 351 exchange is not recharacterized as other than a section 351 exchange for U.S. Federal tax purposes merely because the U.S. person recognizes gain in connection with the exchange under section 367(a).

F. Other Proposed Regulations Under Section 1248

The proposed regulations under section 1248(a) remove as deadwood an exception from the application of section 1248(a) for gain recognized under section 356. In addition, consistent with Notice 87–64, the proposed regulations under section 1248(e) suspend the application of section 1248(e) for periods when capital gains are taxed at a rate that equals or exceeds the rate of tax on ordinary income.

G. Effective/Applicability Dates

1. Sections 367(a)(5) and 6038B

Section 1.367(a)–7 and the revisions to § 1.6038B–1 apply to transfers occurring on or after the date that is 30 days after the date these regulations are published as final regulations in the **Federal Register**.

2. Section 1248(e)

In accordance with Notice 87–64 (1987–2 CB 375), § 1.1248–6(d) (suspending application of section 1248(e)) applies to sales, exchanges, or other dispositions of stock of a domestic corporation occurring on or after September 21, 1987.

3. Changes to Coordination Rule Exception

The revisions to § 1.367(a)–3(d)(2)(vi)(B)(*1*) and (*2*) described in Notice 2008–10 (2008–3 IRB 277) generally apply to transactions occurring on or after December 28, 2007. The requirement to treat section 367(d) property as section 367(a) property for purposes of the coordination rule exception (as discussed in part D.2 of this preamble) applies to transactions occurring on or after August 19, 2008.

4. Sections 1248(f) and 367(b)

Section 1.1248–8(b)(2)(iv), §§ 1.1248(f)–1 through 1.1248(f)–3, and the modifications to § 1.367(b)–4 apply to transfers or distributions occurring on or after the date that is 30 days after the date these regulations are published as final regulations in the **Federal Register**.

H. Adjustments Under Section 367(a)(5) Before Final Regulations Are Published

The general rule of section 367(a)(5) is that the exceptions to section 367(a)(1) provided by section 367(a)(2) and (a)(3) are not available for a transfer of property by a domestic corporation to a foreign corporation in a section 361 exchange, including a section 351 exchange that also qualifies as a section 361 exchange. However, until the date that is 30 days after the date these regulations are published as final regulations, taxpayers may make reasonable adjustments, as described in the legislative history to section 367(a)(5), that are consistent with the policy of section 367(a)(5) so that the exceptions provided by section 367(a)(2) and (a)(3) may apply to the transfer of property by a U.S. transferor to a foreign corporation in a section 361 exchange.

Reasonable adjustments must include adjusting the basis of the stock received by the control group members in the transaction that is attributable to section 367(a) property so that each control group member's basis of such stock equals the lesser of (1) the control group member's section 358 basis in the stock or (2) the control group member's proportionate share of the basis of the section 367(a) property transferred by the U.S. transferor in the section 361 exchange. Adjusting the basis of stock of the foreign acquiring corporation held by a control group member before the section 361 exchange shall not be a reasonable adjustment.

In addition, the U.S. transferor must recognize gain to the extent it has shareholders that are not control group members and to the extent any built-in gain in the section 367(a) property transferred in the section 361 exchange cannot be preserved in the hands of the control group members through their ownership of stock received in the transaction in exchange for the stock or securities of the U.S. transferor. For example, the U.S. transferor may recognize gain if the control group members receive non-qualifying property in the transaction, if the foreign acquiring corporation assumes liabilities of the U.S. transferor in the section 361 exchange, or if the U.S. transferor distributes the stock received in the section 361 exchange

disproportionately to its shareholders. For this purpose, the stock or other property received by the U.S. transferor in the section 361 exchange must be allocated between the section 367(a) property and all other property transferred in the section 361 exchange consistent with general tax principles, including the principles of Rev. Rul. 68–55, 1968–1 CB 140, and the authorities cited therein.

Adjustments made in accordance with the proposed regulations under section 367(a)(5) included in this document shall be considered reasonable and in accordance with the policy of section 367(a)(5).

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Effect on Other Documents

The following publications are proposed to be obsolete as of the date 30 days after the date these regulations are published as final regulations in the **Federal Register**:

Notice 87–64 (1987–2 CB 375).

Notice 2008–10 (2008–3 IRB 277).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) apply to these regulations.

It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation primarily will affect large domestic corporations engaged in cross-border corporate transactions. Thus, the number of affected small entities will not be substantial. A certain number of small domestic corporations may be shareholders of a larger domestic corporation the stock or assets of which are acquired by a foreign corporation in connection with an asset reorganization, and such shareholders may be required to make certain adjustments in the stock of the foreign acquiring corporation. Nonetheless, the IRS and Treasury Department do not anticipate the number of such shareholders to be substantial. Furthermore, the IRS and Treasury Department estimate that any small entities that are affected by the regulations will likely face a burden of approximately ten hours (at an hourly rate of $200) from the adjustments made to the basis of the stock received in the reorganization. Considering that the collections of information enable taxpayers to defer or avoid the recognition of potentially large amounts of gain, the IRS and Treasury Department believe that $2000 is not a significant economic impact. Comments about the accuracy of this certification may be submitted to the addresses provided in the preamble. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before these regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Daniel McCall of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the IRS and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.367(a)–3(d)(2)(vi)(B)(*1*)(*i*) also issued under 26 U.S.C. 367(d).

Section 1.367(a)–7 also issued under 26 U.S.C. 367(a), (b), (c), and 337(d).

Section 1.1248–6 also issued under 26 U.S.C. 1248(e).

Section 1.1248–8(b)(2)(iv) also issued under 26 U.S.C. 1248(a), (c), and (f).

Section 1.1248(f)–1 also issued under 26 U.S.C. 367(b) and 1248(f).

Section 1.1248(f)–2 also issued under 26 U.S.C. 367(b) and 1248(f).

Section 1.1248(f)–3 also issued under 26 U.S.C. 367(b) and 1248(f).* * *

Par. 2. Section 1.358–6 is amended by adding a new sentence at the end of paragraph (e) to read as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

* * * * *

(e) * * * For rules relating to certain triangular reorganizations involving transfers to which the exception provided in § 1.367(a)–7(c) applies, see § 1.367(b)–4(b)(1)(ii)(B).

* * * * *

Par. 3. Section 1.367(a)–1T is amended by:

1. Revising the second sentence of paragraph (b)(4)(i)(B).

2. Adding new paragraphs (b)(4)(i)(C) and (g)(4).

The revision and additions to read as follows:

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (temporary).

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) * * * Any increase in the basis of the property received by the foreign corporation under section 362(a) or (b) for gain recognized by a U.S. person due to the application of section 367(a) shall be allocated to the transferred property with respect to which gain is recognized in proportion to the gain realized by the U.S. person on the transfer of such property. * * *

(C) A transfer of property by a U.S. person to a foreign corporation shall not be recharacterized for U.S. Federal tax purposes solely because the U.S. person recognizes gain in connection with the transfer under section 367(a)(1). For example, if a U.S. person transfers appreciated stock or securities to a foreign corporation in an exchange described in section 351, the transfer is not recharacterized as other than an exchange described in section 351 solely because the U.S. person recognizes gain in connection with the transfer under section 367(a)(1).

* * * * *

(g) * * *

(4) The rules in paragraphs (b)(4)(i)(B) and (C) of this section apply to transfers occurring on or after the date 30 days after the date these regulations are published as final regulations in the **Federal Register**. For guidance with respect to paragraph (b)(4)(i)(B) of this section before the date 30 days after the date these regulations are published as final regulations in the **Federal Register**, see 26 CFR part 1 revised as of April 1 for the year before the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 1.367(a)–3 is amended by:

1. Revising the third to the last sentence of paragraph (a).
2. Revising paragraphs (b)(1) and (c)(1).
3. Revising paragraphs (d)(2)(vi)(B)(*1*) and (d)(2)(vi)(B)(*1*)(*i*).
4. Adding two new sentences at the end of paragraph (d)(2)(vi)(B)(*2*).
5. Revising the first and fourth sentences of paragraph (d)(3), *Example 6A* (ii).
6. Revising the second and fifth sentences of paragraph (d)(3), *Example 6B* (ii), and add two new sentences after the fifth sentence.
7. Revising the second and fourth sentences of paragraph (d)(3), *Example 6C* (ii).
8. Adding a new sentence between the second and third sentences of paragraph (d)(3), *Example 8* (ii).
9. Revising the first sentence of paragraph (d)(3), *Example 8B* (ii).
10. Revising the first sentence of paragraph (d)(3), *Example 8C* (ii).
11. Revising the second sentence of paragraph (d)(3), *Example 9* (ii), and removing the third sentence.
12. Revising the third sentence of paragraph (d)(3), *Example 10* (ii).
13. Revising the second to last sentence of paragraph (d)(3), *Example 11* (ii), and adding a new sentence after the second to last sentence.
14. Revising the second sentence of paragraph (d)(3), *Example 12* (ii), and removing the last sentence.
15. The heading for paragraph (g) is revised.
16. Paragraph (g)(1)(E) is revised.

The revisions and additions to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) * * * For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and § 1.367(a)–7. * * *

(b) *Transfers by U.S. persons of stock or securities of foreign corporations to foreign corporations*—(1) *General rule.* Except as provided in § 1.367(a)–7, a transfer of stock or securities of a foreign corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if either—

* * * * *

(c) *Transfers by U.S. persons of stock or securities of domestic corporations to foreign corporations*—(1) *In general.* Except as provided in § 1.367(a)–7, a transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if the domestic corporation the stock or securities of which are transferred (referred to as the U.S. target company) complies with the reporting requirements in paragraph (c)(6) of this section and if each of the following four conditions is met:

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) *Exceptions.* (*1*) If a transaction is described in paragraph (d)(2)(vi)(A) of this section, section 367(a) and (d) shall not apply to the extent a domestic corporation (domestic acquired corporation) transfers assets to a foreign corporation (foreign acquiring corporation) in an asset reorganization, and such assets (re-transferred assets) are transferred to a domestic corporation (domestic controlled corporation) in a controlled asset transfer, provided that the domestic controlled corporation's basis in the re-transferred assets is not greater than the domestic acquired corporation's basis in such assets and the conditions contained in paragraphs (d)(2)(vi)(B)(*1*)(*i*) or (d)(2)(vi)(B)(*1*)(*ii*) of this section are satisfied. For purposes of determining whether the domestic controlled corporation's basis in the re-transferred assets is not greater than the domestic acquired corporation's basis in such assets, the domestic acquired corporation's basis in the re-transferred assets shall reflect any increase in basis due to gain recognized by the domestic acquired corporation on the transfer of the re-transferred assets to the foreign acquiring corporation.

(*i*) The conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c) are satisfied with respect to the domestic acquired corporation's transfer of assets to the foreign acquiring corporation. To the extent any of the re-transferred assets constitutes property to which section 367(d) applies (section 367(d) property), however, the exception under paragraph (d)(2)(iv)(B)(*1*) shall apply only if such property is treated as property subject to section 367(a) for purposes of satisfying the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c). The preceding sentences shall apply before the application of the exception under paragraph (d)(2)(vi)(B)(*1*) of this section. See paragraph (g)(1)(E)(*3*) of this section for rules under this paragraph (d)(2)(vi)(B)(*1*)(*i*) that apply to transactions that occur on or after December 28, 2007, and before the date 30 days after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

(*2*) * * * This paragraph (d)(2)(vi)(B)(*2*) shall not, however, apply to an exchange described in section 351 that is also an exchange described in section 361(a) or (b). An exchange described in section 351 that is also an exchange described in section 361(a) or (b) is only eligible for the exception in paragraph (d)(2)(vi)(B)(*1*) of this section.

* * * * *

(3) * * *

Example 6A. * * *

(ii) * * * The transfer of the Business A assets by Z to F does not constitute an indirect stock transfer under paragraph (d) of this section, and, subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business A assets qualify for the section 367(a)(3) active trade or business exception and are not subject to section 367(a)(1). * * *

* * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B assets qualify for the active trade or business exception under section 367(a)(3).

* * *

Example 6B. * * *

(ii) * * * However, subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business A assets qualify for the section 367(a)(3) active trade or business exception and are not subject to section 367(a)(1). * * *

* * * However, pursuant to paragraph (d)(2)(vi)(B)(*1*) of this section and subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B and C assets are not subject to section 367(a) or (d), provided that the basis of the Business B and C assets in the hands of R is no greater than the basis of the assets in the hands of Z. If all or a portion of the Business B and C assets constituted section 367(d) property, as defined in § 1.367(a)–7(f)(10), then

paragraph (d)(2)(vi)(B)(*1*) of this section would apply to Z's transfer of such property only if such property is treated as property subject to section 367(a) for purposes of satisfying the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c). Treating such section 367(d) property as property subject to section 367(a) for this purpose could further reduce V's basis in the F stock received in the reorganization, or result in the recognition of additional gain by Z, under section 367(a)(5) and § 1.367(a)–7(c). * * *

Example 6C. * * *

(ii) * * * However, gain must be recognized on the transfer of such assets under section 367(a)(1) because the section 367(a)(3) active trade or business exception is inapplicable pursuant to section 367(a)(5) and § 1.367(a)–7(b). * * *

* * * The transfer of the Business B assets (which otherwise would satisfy the section 367(a)(3) active trade or business exception) generally is subject to section 367(a)(1) pursuant to section 367(a)(5) and § 1.367(a)–7(b). * * *

* * * * *

Example 8. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B assets qualify for the active trade or business exception under section 367(a)(3). * * *

Example 8B. * * *

(ii) * * * Under section 367(a)(5) and § 1.367(a)–7(b), the active trade or business exception under section 367(a)(3) does not apply to Z's transfer of assets to R. * * *

Example 8C. * * *

(ii) * * * Under section 367(a)(5) and § 1.367(a)–7(b), the active trade or business exception under section 367(a)(3) does not apply to Z's transfer of assets to R. * * *

Example 9. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), Z's transfer of the Business B assets to R (which are not re-transferred to M) qualifies for the active trade or business exception under section 367(a)(3). * * *

Example 10. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business B assets qualify for the active trade or business exception under section 367(a)(3). * * *

Example 11. * * *

(ii) * * * Because D is owned by F, a foreign corporation, the control requirement of section 367(a)(5) and § 1.367(a)–7(c)(1) cannot be satisfied. Therefore, section 367(a)(5) and § 1.367(a)–7(b) preclude the application of the active trade or business exception under section 367(a)(3) from applying to any assets transferred by D to Z. * * *

Example 12. * * *

(ii) * * * Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the active trade or business exception under section 367(a)(3) applies to E's transfer of Business X assets. * * *

* * * * *

(g) *Effective/applicability dates.*

(1) * * *

(E)(*1*) Except as provided in paragraphs (g)(1)(E)(*2*) through (g)(1)(E)(*4*) of this section, the rules of paragraph (d)(2)(vi) of this section apply only to transactions occurring on or after January 23, 2006. See § 1.367(a)–3(d)(2)(vi), as contained in 26 CFR part 1 revised as of April 1, 2005, for transactions occurring on or after July 20, 1998 and before January 23, 2006.

(*2*) Except to the extent provided in paragraph (g)(1)(E)(*3*) of this section, paragraph (d)(2)(vi)(B)(*1*)(*i*) of this section applies to transactions occurring on or after the date 30 days after the date these regulations are published as final regulations in the **Federal Register**.

(*3*)(*i*) For purposes of paragraph (d)(2)(vi)(B)(*1*) of this section, except as provided in paragraph (g)(1)(E)(*3*)(*iii*) of this section, the conditions of paragraph (d)(2)(vi)(B)(*1*)(*i*) of this section shall be satisfied for transactions occurring on or after December 28, 2007, and before the date 30 days after the date these regulations are published as final regulations in the **Federal Register**, provided the conditions in paragraph (g)(1)(E)(*3*)(*ii*) are satisfied.

(*ii*) The domestic acquired corporation is controlled (within the meaning of section 368(c)) by five or fewer (but at least one) domestic corporations (controlling domestic corporations) at the time of the section 361 exchange, appropriate basis adjustments under section 367(a)(5) are made to the stock received (or deemed received) by the controlling domestic corporations in the reorganization, and any other conditions as provided in regulations under section 367(a)(5) are satisfied. For purposes of determining whether the domestic acquired corporation is controlled by five or fewer domestic corporations, all members of the same affiliated group within the meaning of section 1504 shall be treated as one corporation. Any adjustments to stock basis required under section 367(a)(5) must be made to the stock received (or deemed received) by the controlling domestic corporations in the reorganization such that the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange is reflected in such stock. The basis adjustment requirement cannot be satisfied by adjusting the basis in stock of the foreign acquiring corporation held by the controlling domestic corporations before the reorganization. To the extent the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange cannot be preserved in the stock received (or deemed received) by the controlling domestic corporations in the reorganization, the domestic acquired corporation's transfer of property to the foreign acquiring corporation shall be subject to sections 367(a) and (d).

(*iii*) The second sentence of paragraph (d)(2)(vi)(B)(*1*)(*i*) shall apply to transactions occurring on or after August 19, 2008 and before the date 30 days after the date these regulations are published as final regulations in the **Federal Register**.

(*4*) The last two sentences of paragraph (d)(2)(vi)(B)(*2*) shall apply to transactions occurring on or after December 28, 2007.

* * * * *

Par. 5. Section 1.367(a)–7 is added to read as follows:

§ 1.367(a)–7 Rules under section 367(a)(5) applicable to exchanges described in section 361(a) or (b).

(a) *Scope and purpose.* This section provides rules under section 367(a)(5) that apply to a transfer of certain property, including stock and securities, by a domestic corporation (U.S. transferor) to a foreign corporation (foreign acquiring corporation) in an exchange described in section 361(a) or (b), or in an exchange described in section 351 that is also described in section 361(a) or (b) (collectively, a section 361 exchange). The purpose of this section is to ensure that the net gain realized by the U.S. transferor in connection with the transfer of certain property to the foreign acquiring corporation in the section 361 exchange is, in the aggregate, recognized currently by the U.S. transferor or, to the extent permitted under the rules of this section, preserved in the stock received (or deemed received) in the reorganization by certain domestic corporate shareholders of the U.S. transferor in exchange for stock or securities of the U.S. transferor. This section applies only to the transfer of section 367(a) property in the section 361 exchange. See section 367(d) and

the regulations under that section for rules applicable to transfers of section 367(d) property.

(b) *General rule.* Except as provided in paragraph (c) of this section, the exceptions to section 367(a)(1) provided in section 367(a) and the regulations under that section shall not apply to a transfer of section 367(a) property by a U.S. transferor to a foreign acquiring corporation in a section 361 exchange.

(c) *Exception.* Except to the extent provided in paragraph (d) of this section, paragraph (b) of this section shall not apply to the transfer of section 367(a) property in a section 361 exchange if the conditions of paragraphs (c)(1) through (c)(4) of this section are satisfied and an election to apply the exception provided by this paragraph (c) is made in the manner provided by paragraph (c)(5) of this section. If paragraph (b) of this section does not apply to a section 361 exchange, see, for example, §§ 1.367(a)–2T, 1.367(a)–3, 1.367(a)–4T, or 1.367(a)–5T, as applicable, for additional requirements that must be satisfied to avoid the application of section 367(a)(1) to the transfer of section 367(a) property in the section 361 exchange. Nothing in this section shall permit the nonrecognition of gain not otherwise permitted under another provision of the Internal Revenue Code or the regulations under that section. See, for example, section 367(a)(3)(B) and § 1.367(a)–5T.

(1) *Control.* At the time of the section 361 exchange, the U.S. transferor is controlled (within the meaning of section 368(c)) by five or fewer, but at least one, control group members.

(2) *Gain recognition*—(i) *Gain recognition due to non-control group members.* The U.S. transferor recognizes gain equal to the product of the inside gain and the aggregate ownership interest (by value) in the U.S. transferor by all shareholders of the U.S. transferor at the time of the section 361 exchange that are not control group members.

(ii) *Gain recognition where control group member is unable to preserve gain.* With respect to each control group member, the U.S. transferor recognizes gain equal to the amount, if any, by which—

(A) The product of the inside gain and the control group member's ownership interest (by value) in the U.S. transferor at the time of the section 361 exchange; exceeds

(B) The product of the section 367(a) percentage and the fair market value of the stock received (or deemed received) by the control group member in exchange for stock or securities of the U.S. transferor under section 354, 355, or 356. For an illustration of gain recognition under this paragraph, see paragraph (g) of this section, *Example 2.*

(3) *Basis adjustments*—(i) *General rule.* Except as provided in paragraphs (c)(3)(ii)(A) and (C) of this section, each control group member's aggregate basis in the stock received (or deemed received) in exchange for stock or securities of the U.S. transferor under section 354, 355, or 356, as determined under section 358 and the regulations under that section (section 358 basis), is reduced by the amount, if any, by which—

(A) The product of the inside gain and the control group member's ownership interest (by value) in the U.S. transferor at the time of the section 361 exchange, reduced by any gain recognized by the U.S. transferor with respect to such control group member under paragraph (c)(2)(ii) of this section; exceeds

(B) The control group member's outside gain.

(ii) *Special rules*—(A) *General applicability.* Paragraph (c)(3)(i) of this section shall apply only to stock that was received by the U.S. transferor in the section 361 exchange and distributed to the control group member.

(B) *Multiple blocks of stock.* If a control group member holds multiple blocks of stock received (or deemed received) in the transaction, the section 358 basis of each block of stock must be reduced pro rata based on the relative section 358 basis of each block of stock.

(C) *Successive distributions to which section 355 applies.* Paragraph (c)(3)(i) of this section shall not apply to a control group member that distributes the stock of a foreign acquiring corporation received from the U.S. transferor in a distribution to which section 355 applies (section 355 distribution), that is in connection with a transaction described in paragraph (d) of this section. If paragraph (c)(3)(i) of this section does not apply to a control group member pursuant to the previous sentence, then paragraph (c)(3)(i) of this section shall apply to the final distributee (as defined in paragraph (d) of this section) that receives the stock of the foreign acquiring corporation in the final section 355 distribution described in paragraph (d) of this section. If the final distributee holds multiple blocks of stock of the foreign acquiring corporation after the final section 355 distribution, the rules of paragraph (c)(3)(ii)(B) of this section shall apply to reduce the section 358 basis of such blocks of stock.

(iii) *Applicable cross-references.* For illustrations of the adjustment to stock basis under paragraph (c)(3)(i) of this section, see paragraph (g) of this section, *Example 1* and *Example 2,* and § 1.1248(f)–2(d), *Example 2.* For an illustration of the adjustment to stock basis under paragraph (c)(3)(ii)(A) of this section, see § 1.1248(f)–2(d), *Example 4.* For an illustration of the adjustment to stock basis under paragraph (c)(3)(ii)(B) of this section, see paragraph (g) of this section, *Example 3.*

(4) *Agreement to amend or file a U.S. income tax return*—(i) *General rule.* Except as provided in paragraph (c)(4)(ii) of this section, the U.S. transferor complies with the requirements of § 1.6038B–1(c)(6)(iii).

(ii) *Exception.* Section 1.6038B–1(c)(6)(iii) shall not apply to the extent any section 367(a) property transferred in the section 361 exchange is transferred in connection with a transaction described in § 1.367(a)–3(e) and a gain recognition agreement is filed pursuant to § 1.367(a)–8 with respect to the transfer of such property.

(5) *Election and reporting requirements*—(i) *General rule.* The U.S. transferor and each control group member elect to apply the provisions of paragraph (c) of this section in the manner provided under paragraph (c)(5)(ii) or (iii) of this section, as applicable, and by entering into a written agreement described in paragraph (c)(5)(iv) of this section. If a control group member distributes the stock of the foreign acquiring corporation received from the U.S. transferor in a section 355 distribution that is in connection with a transaction described in paragraph (d) of this section, the final distributee that receives such stock in the final section 355 distribution elects to apply the provisions of this paragraph (c) and enters into the written agreement instead of the control group member.

(ii) *Election and reporting by control group member or final distributee*—(A) *Time and manner of making election.* Each control group member (or final distributee) elects to apply the provisions of paragraph (c) of this section by including a statement (in the form and with the content specified in paragraph (c)(5)(ii)(B) of this section) on or with its timely-filed return for the taxable year in which the section 361 exchange occurs. If the control group member (or final distributee) is a member of a consolidated group for the taxable year of the section 361 exchange, the common parent of the consolidated group makes the election on behalf of the control group member (or final distrubutee).

(B) *Form and content of election statement.* The statement shall be entitled, STATEMENT TO ELECT TO

APPLY EXCEPTION UNDER § 1.367(a)–7(c) and must set forth:

(1) The name and taxpayer identification number of the control group member (or final distributee);

(2) The name and taxpayer identification number of the common parent of the consolidated group, if any;

(3) The amount of the adjustment (if any) to stock basis required under paragraph (c)(3)(i) of this section, the resulting adjusted basis in such stock, and the fair market value of such stock; and

(4) The date on which the written agreement described in paragraph (c)(5)(iv) of this section was entered into.

(iii) *Statement by U.S. transferor.* The U.S. transferor elects to apply the provisions of paragraph (c) of this section in the form and manner set forth in § 1.6038B–1(c)(6)(ii).

(iv) *Written agreement.* The U.S. transferor and each control group member (or final distributee) must enter into a written agreement on or before the due date (including extensions) for the U.S. transferor's tax return for the taxable year during which the section 361 exchange occurs. Each party to the agreement must retain the original or a copy of the agreement in the manner specified by § 1.6001–1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the copy of the agreement in connection with an examination of the taxable year during which the section 361 exchange occurs. The written agreement must—

(A) State the document constitutes an agreement entered into pursuant to paragraph (c)(5) of this section;

(B) Identify the U.S. transferor and each control group member (or final distributee);

(C) State the amount of gain (if any) recognized by the U.S. transferor under paragraph (c)(2) of this section; and

(D) With respect to each control group member (or final distributee), state the amount of the adjustment (if any) to stock basis required under paragraph (c)(3)(i) of this section, the resulting adjusted basis in such stock, and the fair market value of such stock.

(d) *Section 361 exchange followed by successive distributions to which section 355 applies.* If the U.S. transferor distributes stock of the foreign acquiring corporation received in the section 361 exchange to a control group member in a section 355 distribution and, as part of a plan or series of related transactions, such stock is further distributed in one or more successive section 355 distributions, paragraph (c) of this section shall apply to the section 361 exchange only to the extent each subsequent section 355 distribution is to a member of the affiliated group (within the meaning of section 1504) that includes the U.S. transferor at the time of the section 361 exchange. In such a case, each affiliated group member that receives stock of the foreign acquiring corporation in the final section 355 distribution (final distributee) shall be subject to the requirements of paragraphs (c)(3) and (c)(5) of this section.

(e) *Other rules*—(1) *Section 367(a) property on which gain is recognized.* Gain recognized by the U.S. transferor pursuant to paragraph (c)(2) of this section shall be treated as recognized with respect to the section 367(a) property transferred in the section 361 exchange in proportion to the amount of gain realized by the U.S. transferor on the transfer of each item of section 367(a) property. This paragraph (e)(1) shall be applied after taking into account any gain recognized by the U.S. transferor on the transfer of the section 367(a) property in the section 361 exchange pursuant to all other provisions under section 367(a) and the regulations under that section. See, for example, section 367(a)(3)(B) and § 1.367(a)–4T. See § 1.367(a)–1T(b)(4) for additional rules on the character, source, and adjustments relating to gain recognized under section 367(a).

(2) *Reasonable cause exception for failure to comply*—(i) *Request for relief.* If a control group member (or final distributee) fails to comply with any requirement of this section, the control group member (or final distributee) shall be considered to have complied with such requirement if it submits a request for relief as provided under paragraph (e)(2)(ii) of this section and can demonstrate to the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the control group member's (or final distributee's) tax return for the taxable year, that such failure was due to reasonable cause and not willful neglect. Whether the failure to comply was due to reasonable cause and not willful neglect will be determined by the Director after considering all the facts and circumstances. The Director shall notify the control group member (or final distributee) in writing within 120 days if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. For this purpose, the 120-day period shall begin on the date the Internal Revenue Service notifies the control group member (or final distributee) in writing that the request for relief has been received and assigned for review. Once such period commences, if the control group member (or final distributee) is not again notified within 120 days, then the control group member (or final distributee) shall be deemed to have established reasonable cause.

(ii) *Requirements for reasonable cause relief*—(A) *Time of submission.* Requests for reasonable cause relief under paragraph (e)(2)(i) of this section will be considered only if as soon as the control group member (or final distributee) becomes aware of the failure to comply with any requirement of this section, the control group member (or final distributee) attaches the statements or other documents that should have been filed, as well as a complete written statement setting forth the reasons for the failure to comply, to an amended return that amends the return to which the documents should have been attached pursuant to this section. The amended return and all required attachments must be filed with the applicable Internal Revenue Service Center with which the control group member (or final distributee) filed its original return to which the documents should have been attached.

(B) *Notice requirement.* In addition to the requirement of paragraph (e)(2)(ii)(A) of this section, the control group member (or final distributee) must comply with the requirements of paragraph (e)(2)(ii)(B)(*1*) or (*2*) of this section, as applicable.

(*1*) If the control group member (or final distributee) is under examination for any taxable year when the request for reasonable cause relief is filed, a copy of the amended return and attachments must be provided to the Internal Revenue Service personnel conducting the examination.

(*2*) If the control group member (or final distributee) is not under examination for any taxable year when the request for reasonable cause relief is filed, a copy of the amended return and attachments must be provided to the Director having jurisdiction over the return.

(iii) *Cross-reference for reasonable cause relief requests by U.S. transferor.* If the U.S. transferor fails to comply with any requirement of this section, the U.S. transferor shall be treated as having complied with such requirement if the U.S. transferor (or the foreign acquiring corporation on behalf of the U.S. transferor) complies with the reasonable cause exception procedures described in § 1.6038B–1(f)(3).

(f) *Definitions.* The following definitions apply for purposes of this section:

(1) *Block of stock* is a group of shares of the same class of stock and that have an identical basis.

(2) *Control group and control group member*—(i) *General rule.* Except as provided in paragraph (f)(2)(ii) of this section, the *control group* is the five or fewer, but at least one, domestic corporations that control (within the meaning of section 368(c)) the U.S. transferor at the time of the section 361 exchange. If the U.S. transferor is controlled by more than five domestic corporations at the time of the section 361 exchange, but some combination of five or fewer domestic corporations control the U.S. transferor at such time, the U.S. transferor shall designate the five domestic corporations that comprise the control group on Form 926, ''Return by a U.S. Transferor of Property to a Foreign Corporation.'' For purposes of this paragraph, members of the same affiliated group (within the meaning of section 1504) shall be treated as one corporation. Except as provided in paragraph (f)(2)(ii) of this section, a *control group member* is a domestic corporation that is part of the control group.

(ii) *Exception for certain entities.* Neither a regulated investment company (as defined in section 851(a)), nor a real estate investment trust (as defined in section 856(a)), nor an S corporation (as defined in section 1361(a)) shall be a control group member.

(3) *Deductible liability* is any liability of the U.S. transferor that is assumed in the section 361 exchange or satisfied in connection with the reorganization (within the meaning of section 361(c)(3)), but only if the payment of such liability would give rise to a deduction.

(4) *Gross fair market value* means fair market value determined without regard to mortgages, liens, pledges, or other liabilities. The fair market value of any property subject to a nonrecourse indebtedness shall not be less than the amount of such indebtedness.

(5) *Inside basis* is the amount equal to the aggregate bases of the section 367(a) property transferred by the U.S. transferor in the section 361 exchange, increased by any gain recognized by the U.S. transferor on the transfer of such property in the section 361 exchange, including gain treated as a dividend under section 1248(a), but not including any gain recognized under paragraph (c)(2) of this section (including any such gain treated as a dividend under section 1248(a)).

(6) *Inside gain* is the amount by which the aggregate gross fair market value of the section 367(a) property transferred in the section 361 exchange exceeds the sum of the inside basis and the product of the section 367(a) percentage and the aggregate deductible liabilities of the U.S. transferor.

(7) *Outside gain* is the product of the section 367(a) percentage and the amount by which—

(i) The aggregate fair market value of the stock received (or deemed received) by a control group member in exchange for stock or securities of the U.S. transferor under section 354, 355, or 356; exceeds

(ii) The control group member's aggregate section 358 basis of such stock (as determined without regard to any adjustment to such basis required under paragraph (c)(3) of this section).

(8) *Section 367(a) percentage* is the ratio of the aggregate gross fair market value of the section 367(a) property transferred by the U.S. transferor in the section 361 exchange to the aggregate gross fair market value of all property transferred by the U.S. transferor in the section 361 exchange.

(9) *Section 367(a) property*—(i) *General rule.* Except as provided in paragraph (f)(9)(ii) of this section, *section 367(a) property* is any property other than section 367(d) property.

(ii) *Special rule.* Any property that would otherwise constitute section 367(a) property under paragraph (f)(9)(i) of this section shall not constitute section 367(a) property for purposes of any determination under this section for which the amount of section 367(a) property transferred in the section 361 exchange is relevant, if such property is acquired by the U.S. transferor in connection with the section 361 exchange with a principal purpose of affecting any such determination, including, for example, the section 367(a) percentage, inside gain, and inside basis.

(10) *Section 367(d) property* is property to which section 367(d) applies.

(11) *Timely-filed return* is a U.S. income tax return filed on or before the due date set forth in section 6072(b), plus any extension of time to file such return granted under section 6081.

(g) *Examples.* The rules of this section are illustrated by the following examples. The analysis of the following examples is limited to a discussion of issues under this section. Unless otherwise indicated, for purposes of the following examples assume: DP1, DP2, and DC are domestic corporations that do not join in the filing of a consolidated return; FP and FA are foreign corporations that are unrelated to DP1, DP2, and DC; each corporation has a single class of stock outstanding; each shareholder of DC owns one block of stock in DC; DC's Business A constitutes section 367(a) property that could qualify for the exception to section 367(a)(1) under § 1.367(a)–2T; DC has no liabilities, and the requirements in paragraph (c)(5) of this section and § 1.6038B–1(c)(6)(ii) are satisfied.

Example 1. Tainted assets and non-control group ownership. (i) *Facts.* DP1, DP2, and FP own 50%, 30%, and 20%, respectively, of the outstanding stock of DC. DP1's DC stock has a $80x basis and $100x fair market value. DP2's DC stock has a $50x basis and $60x fair market value. DC owns inventory with a $40x basis and a $100x fair market value. DC also owns Business A with a $10x basis and $100x fair market value. In a reorganization described in section 368(a)(1)(F), DC transfers the inventory and Business A to FA, a newly formed corporation, in exchange for all of the outstanding stock of FA. DC's transfer of the inventory and Business A to FA qualifies as a section 361 exchange. DP1, DP2, and FP exchange the DC stock for a proportionate amount of FA stock pursuant to section 354.

(ii) *Result.* (A) Under section 367(a)(3)(B), DC must recognize $60x gain on the transfer of the inventory to FA. Under § 1.367(a)–1T(b)(4)(i)(B), the section 362 basis increase is allocated to the inventory such that FA's basis in the inventory is $100x. Under section 367(a)(5) and paragraph (b) of this section, DC's transfer of Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must also generally recognize $90x gain on the transfer of Business A to FA notwithstanding the application of section 351 or section 361. However, if the conditions and requirements of paragraph (c) of this section are met, DC's transfer of Business A to FA may be partially eligible for the active foreign trade or business exception provided by section 367(a)(3) and § 1.367(a)–2T. See § 1.367(a)–2T for the requirements of the active foreign trade or business exception.

(B) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by DP1 and DP2 at the time of the section 361 exchange.

(C) Under paragraph (c)(2)(i) of this section, DC must recognize $18x gain on the transfer of Business A with respect to FP, a non-control group member. The $18x gain equals the product of the inside gain ($90x) and FP's 20% ownership interest (by value) in DC at the time of the section 361 exchange. Under paragraph (f)(6) of this section, the $90x inside gain is the amount by which the aggregate gross fair market value ($200x) of the section 367(a) property (the inventory and Business A) exceeds the $110x inside basis. Under paragraph (f)(5) of this section, the inside basis equals the $50x aggregate basis of the section 367(a) property transferred in the section 361 exchange, increased by the $60x gain recognized by DC on the transfer of the inventory to FA, but not

by the $18x gain recognized by DC under paragraph (c)(2)(i) of this section with respect to FP. Under paragraph (e)(1) of this section, the $18x gain recognized under paragraph (c)(2)(i) of this section is treated as recognized with respect to Business A.

(D) DC is not required to recognize gain under paragraph (c)(2)(ii) of this section with respect to either DP1 or DP2. DP1's share of inside gain ($45x) does not exceed the product of the section 367(a) percentage (100%) and the fair market value of the FA stock ($100x) received in exchange for its DC stock. DP1's share of inside gain is determined based on its 50% ownership interest (by value) in DC at the time of the section 361 exchange. DP2's share of inside gain ($27x) does not exceed the product of the section 367(a) percentage (100%) and the fair market value of the FA stock ($60x) received in exchange for its DC stock. DP2's share of inside gain is determined based on its 30% ownership interest (by value) in DC at the time of the section 361 exchange.

(E) Under paragraph (c)(3) of this section, DP1's section 358 basis in the FA stock ($80x) received in exchange for its DC stock must be reduced by $25x, the amount by which DP1's share of inside gain ($45x) exceeds DP1's $20x outside gain. DP1's share of inside gain is determined based on its 50% ownership interest (by value) in DC at the time of the section 361 exchange. Because DC does not recognize gain on the section 361 exchange with respect to DP1, DP1's share of inside gain is not reduced under paragraph (c)(3)(i)(A) of this section. DP1's $20x outside gain equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value ($100x) of the FA stock received by DP1 in exchange for its DC stock exceeds the section 358 basis of such FA stock ($80x). As adjusted, DP1's basis in its FA stock is $55x. Similarly, under paragraph (c)(3) of this section, DP2's section 358 basis in the FA stock ($50x) received in exchange for its DC stock must be reduced by $17x, the amount by which DP2's share of inside gain ($27x) exceeds DP1's $10x outside gain. DP2's share of inside gain is determined based on its 30% ownership interest (by value) in DC at the time of the section 361 exchange. Because DC does not recognize gain on the section 361 exchange with respect to DP2, DP2's share of inside gain is not reduced under paragraph (c)(3)(i)(A) of this section. DP2's $10x outside gain equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value ($60x) of the FA stock received by DP2 in exchange for its DC stock exceeds the section 358 basis of such stock ($50x). As adjusted, DP2's basis in its FA stock is $33x.

(F) Under paragraph (c)(4) of this section, DC must comply with the requirements of § 1.6038B–1(c)(6)(iii).

Example 2. Triangular reorganization involving the exchange of section 367(d) property for stock and cash. (i) *Facts.* (A) DP1 wholly owns DC. DP1 and DC file a consolidated return. DP1's DC stock has a $175x basis and $200x fair market value. DC owns Business A ($10x basis and $150x fair market value) and a patent ($0x basis and $50x fair market value). The patent is section 367(d) property. FP wholly owns FA.

(B) In a triangular reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(D), DC transfers Business A and the patent to FA in exchange for $180x of FP stock and $20x cash. DC's transfer of Business A and the patent to FA is a section 361 exchange. DP1 exchanges its DC stock for the $180x of FP stock and the $20x cash pursuant to section 356. The triangular reorganization constitutes an indirect stock transfer under § 1.367(a)–3(d)(1)(i), and DP1 files a gain recognition agreement under § 1.367(a)–8 with respect to such transfer.

(ii) *Result.* (A) Under section 367(a)(5) and paragraph (b) of this section, DC's transfer of Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must generally recognize $140x gain on the transfer of Business A to FA notwithstanding the application of section 361. However, if the requirements of paragraph (c) of this section are satisfied, DC's transfer of Business A to FA may be eligible for the active foreign trade or business exception provided by section 367(a)(3) and § 1.367(a)–2T. See § 1.367(a)–2T for the requirements of the active foreign trade or business exception. For rules applicable to DC's transfer of the patent to FA, see section 367(d) and the regulations under that section.

(B) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by DP1 at the time of the section 361 exchange.

(C) DC is not required to recognize gain under paragraph (c)(2)(i) of this section because at the time of the section 361 exchange DC is wholly owned by DP1, a control group member. Under paragraph (c)(2)(ii) of this section, DC must recognize $5x gain, the amount by which the product of the inside gain ($140x) and DP1's 100% ownership interest (by value) in DC at the time of the section 361 exchange exceeds the product of the section 367(a) percentage (75%) and the fair market value ($180x) of the FP stock received by DP1 in exchange for DC stock. The $140x inside gain equals the aggregate gross fair market value of Business A ($150x) less the inside basis ($10x). Under paragraph (e)(1) of this section, the $5x gain recognized is allocated to Business A. Under § 1.1502–32(b)(2), DP1 increases the basis of its DC stock by $5x.

(D) Under paragraph (c)(3) of this section, DP1's section 358 basis ($180x) in the FP stock ($180x basis of DC stock, decreased by $20x cash received, and increased by the $20x gain recognized under section 356) is reduced by $135x, the amount by which the product of the $140x inside gain, reduced by the $5x recognized by DC under paragraph (c)(2)(ii) ($135x) and DP1's 100% ownership interest (by value) in DC at the time of the exchange exceeds DP1's outside gain ($0x). The $0x outside gain equals the product of the section 367(a) percentage (75%) and the amount by which the fair market value of the FP stock received by DP1 ($180x) exceeds the section 358 basis of such stock ($180x). As adjusted, DP1's basis in the FP stock is $45x.

(E) Under paragraph (c)(4)(i) of this section, DC must comply with the requirements of § 1.6038B–1(c)(6)(iii).

Example 3. Adjustment to basis of multiple blocks of stock. (i) *Facts.*(A) DP1 wholly owns DC. DP1's DC stock is divided into two blocks of stock (Block 1 and Block 2). Block 1 has a $60x basis and $100x fair market value. Block 2 has a $120x basis and $100x fair market value. DC owns Business A ($15x basis and $150x fair market value) and a patent ($0x basis and $50x fair market value). The patent is section 367(d) property.

(B) In a reorganization described in section 368(a)(1)(F), DC transfers Business A and the patent to FA, a newly-formed corporation, in exchange for 2 shares of FA stock. DC's transfer of Business A and the patent to FA qualifies as a section 361 exchange. DP1 exchanges Block 1 and Block 2 for the two shares of FA stock pursuant to section 354. Pursuant to § 1.358–2(a)(2)(i), one share of the FA stock corresponds to Block 1 (Share 1) and the other share of FA stock corresponds to Block 2 (Share 2). The basis and holding period of Share 1 and Share 2 correspond to the basis and holding period of Block 1 and Block 2, respectively.

(ii) *Result.* (A) Under section 367(a)(5) and paragraph (b) of this section, DC's transfer of Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must generally recognize $135x gain on the transfer of Business A to FA notwithstanding the application of section 351 or section 361. However, if the requirements of paragraph (c) of this section are met, DC's transfer of Business A to FA may be eligible for the active foreign trade or business exception provided in section 367(a)(3). See § 1.367(a)–2T for the requirements of the active foreign trade or business exception. For rules applicable to DC's transfer of the patent to FA, see section 367(d) and the regulations under that section.

(B) The requirement of paragraph (c)(1) of this section is satisfied because DC is controlled (within the meaning of section 368(c)) by DP1 at the time of the section 361 exchange.

(C) DC is not required to recognize gain under paragraph (c)(2)(i) of this section because, at the time of the section 361 exchange, DC is wholly owned by DP1. DC is not required to recognize gain under paragraph (c)(2)(ii) of this section because DP1's 100% share of inside gain ($135x) does not exceed the product of the section 367(a) percentage (75%) and the fair market value ($200x) of the FA stock received by DP1 in exchange for its DC stock ($150x). Under paragraph (f)(6) of this section, the $135x inside gain equals the aggregate gross fair market value of the section 367(a) property ($150x) less the inside basis ($15x).

(D) Under paragraph (c)(3) of this section, DP1's aggregate section 358 basis in Share 1 ($60x) and Share 2 ($120x) must be reduced by $120x, the amount by which DP1's 100% share of inside gain ($135x) exceeds DP1's $15x outside gain. The $15x outside gain equals the product of the section 367(a) percentage (75%) and the amount by which the fair market value of the FA stock received by DP1 ($200x) exceeds the section 358 basis of the FA stock ($180x) (75% of $20x).

(E) Under paragraph (c)(3)(ii)(B) of this section, the $120x reduction to basis is allocated between Share 1 and Share 2 based on the relative section 358 basis of each share. Therefore, the basis in Share 1 is

reduced by $40x ($120x multiplied by $60x/$180x). As adjusted, DP1's basis in Share 1 is $20x. The basis in Share 2 is reduced by $80x ($120x multiplied by $120x/$180x). As adjusted, DP1's basis in Share 2 is $40x.

(F) Under paragraph (c)(4)(i) of this section, DC must comply with the requirements of § 1.6038B–1(c)(6)(iii).

(h) *Applicable cross-references.* For rules relating to the character, source, and adjustments resulting from gain recognized by a U.S. transferor under section 367(a), see § 1.367(a)–1T(b)(4). For rules relating to the acquisition of the stock or assets of a foreign corporation by another foreign corporation, see § 1.367(b)–4. For rules relating to transfers of section 367(d) property by a U.S. transferor to a foreign corporation, see section 367(d) and the regulations under that section. For rules relating to distributions of stock of a foreign corporation by a domestic corporation under section 355 or 361, see §§ 1.1248(f)–1 through –3. For additional rules relating to certain reporting requirements of a U.S. transferor, see § 1.6038B–1.

(i) [Reserved.]

(j) *Effective/applicability date.* This section shall apply to transfers occurring on or after the date 30 days after the date these regulations are published as final regulations in the **Federal Register**.

Par. 6. Section 1.367(b)–4 is amended by:

1. Revising paragraphs (b)(1)(i)(B)(*2*), (b)(1)(ii), and (b)(1)(iii), *Example 4* (ii).

2. Adding paragraph (b)(1)(iii), *Example 5.*

The revisions and additions to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Immediately after the exchange, the foreign acquiring corporation or the foreign acquired corporation (if any, such as in the case of the acquisition of the stock of a foreign acquired corporation) is not a controlled foreign corporation as to which the United States person described in paragraph (b)(1)(i)(A) of this section is a section 1248 shareholder.

(ii) *Special rules for certain triangular reorganizations*—(A) *Exception for receipt of domestic stock.* In the case of a triangular reorganization described in § 1.358–6(b)(2), or a reorganization described in section 368(a)(1)(G) and (a)(2)(D), an exchange is not described in paragraph (b)(1)(i) of this section if—

(*1*) The stock received in the exchange is stock of a domestic corporation that immediately after the exchange is a section 1248 shareholder of—

(*i*) The foreign acquired corporation, in the case of a triangular B reorganization or a reorganization in which stock of the foreign acquired corporation is acquired pursuant to a transfer to which the exception provided in § 1.367(a)–7(c) applies; or

(*ii*) The surviving corporation, in the case of a transaction that is not described in paragraph (b)(1)(ii)(A)(*1*)(*i*) of this section and that is a triangular C reorganization, a forward triangular merger, a reorganization described in section 368(a)(1)(G) and (a)(2)(D), or a reverse triangular merger; and

(*2*) The foreign acquired corporation or surviving corporation is a controlled foreign corporation. See paragraph (b)(1)(iii) of this section, *Example 3B* for an illustration of this rule.

(B) *Adjustments to basis of stock of foreign acquiring corporation*—(*1*) *Transfers to which exception under § 1.367(a)–7(c) applies.* If the stock of the foreign acquired corporation is acquired by the foreign acquiring corporation pursuant to a triangular reorganization described in § 1.358–6(b)(2)(i) through (iii), or a reorganization described in section 368(a)(1)(G) and (a)(2)(D), to which the exception provided in § 1.367(a)–7(c) applies and that is not described in paragraph (b)(1)(i) of this section, the corporation (foreign or domestic) that controls the foreign acquiring corporation shall apply the principles of § 1.367(b)–13 to adjust the basis of the stock of the foreign acquiring corporation so that the section 1248 amount attributable to the stock of the foreign acquired corporation (determined when the foreign acquiring corporation acquires such stock) is reflected in the stock of the foreign acquiring corporation immediately after the exchange. See paragraph (b)(1)(iii) of this section, *Example 5*, for an illustration of this rule.

(2) *Other triangular reorganizations.* See § 1.367(b)–13(c) for rules regarding the adjustment to the basis of the stock of the foreign acquiring corporation in other triangular reorganizations described in paragraph (b)(1)(ii)(A)(*1*)(*ii*) of this section.

(iii) * * *

Example 4. * * *

(ii) *Result.* DC2, the exchanging shareholder, is a U.S. person and a section 1248 shareholder with respect to FC2, the foreign acquired corporation. Whether DC2 is required to include in income the section 1248 amount attributable to the FC2 stock under paragraph (b)(1)(i) of this section depends on whether, immediately after DC2's exchange of the FC2 stock for FC1 stock (and before the distribution of the FC1 stock to DC1 under section 361(c)(1)), FC1 and FC2 are controlled foreign corporations as to which DC2 is a section 1248 shareholder. If, immediately after the exchange, FC1 and FC2 are both controlled foreign corporations as to which DC2 is a section 1248 shareholder, then DC2 is not required to include in income the section 1248 amount attributable to the FC2 stock under paragraph (b)(1)(i) because neither condition in paragraph (b)(1)(i)(B) is satisfied. Alternatively, if immediately after the exchange either FC1 or FC2 is not a controlled foreign corporation as to which DC2 is a section 1248 shareholder then, pursuant to paragraph (b)(1)(i) of this section, DC2 must include in income the section 1248 amount attributable to the FC2 stock exchanged. For the treatment of DC2's transfer of assets to FC1, see also section 367(a)(1) and (a)(3) and the regulations under that section. Because DC2's transfer of assets to FC1 is described in section 361(a) or (b), see section 367(a)(5) and § 1.367(a)–7. If any of the assets transferred are intangible assets, see section 367(d) and the regulations under that section. With respect to DC2's distribution of the FC1 stock to DC1 under section 361(c)(1), see section 1248(f)(1), § 1.1248(f)–1 and § 1.1248(f)–2.

Example 5. (i) *Facts.* DC1, a domestic corporation, wholly owns DC2, a domestic corporation. DC1's DC2 stock has a $30 basis and a $100 fair market value. DC2's only asset is all the outstanding stock of FC2, a foreign corporation. DC2's FC2 stock has a $30 basis, $100 fair market value and a $20 section 1248 amount. USP, a domestic corporation unrelated to DC1, DC2 or FC2, wholly owns FC1, a foreign corporation. In a triangular reorganization described in section 368(a)(1)(C), DC2 transfers all the FC2 stock to FC1 in exchange solely for voting stock of USP and then distributes the USP stock to DC1 under section 361(c)(1). DC1 exchanges its DC2 stock for the USP stock under section 354. DC2's transfer of the FC2 stock to FC1 is described in section 361(a) and therefore, under section 367(a)(5) and § 1.367(a)–7, is generally subject to section 367(a)(1). However, DC2's transfer of the FC2 stock to FC1 qualifies for the exception provided in § 1.367(a)–7(c). DC1 and DC2 elect to apply the rules of § 1.367(a)–7(c) in accordance with § 1.367(a)–7(c)(5). DC1 is not required to adjust the basis of its USP stock (determined under section 358) under section 367(a)(5) and § 1.367(a)–7(c)(3).

(ii) *Result.* Under paragraph (b)(1)(ii)(A) of this section, because the stock received by DC2 in exchange for its FC2 stock is stock of a domestic corporation (USP) and, immediately after the exchange, USP is a section 1248 shareholder of FC2 (the foreign acquired corporation) and FC2 is a controlled foreign corporation, DC2's exchange of its FC2 stock for USP stock is not described in paragraph (b)(1)(i) of this section. Therefore, DC2 is not required to include in income the section 1248 amount attributable to the FC2 stock. Under paragraph (b)(1)(ii)(B)(*1*) of this section, USP must apply the principles of

§ 1.367(b)–13 to adjust the basis of its FC1 stock so that the $20 section 1248 amount attributable to the FC2 stock at the time of the exchange is reflected in the FC1 stock immediately after the exchange. Under the principles of § 1.367(b)–13, each share of FC1 stock held by USP after the exchange must be divided into one portion attributable to the FC1 stock immediately before the exchange and one portion attributable to the FC2 stock acquired in the exchange. The $30 basis in the FC2 stock and the earnings and profits attributable to the FC2 stock before the exchange are attributable to the divided portions of the FC1 stock to which the FC2 stock relates.

* * * * *

Par. 7. Section 1.367(b)–6 is amended by revising paragraph (a)(1) to read as follows:

§ 1.367(b)–6 Effective dates and coordination rules.

(a) *Effective date*—(1) *In general*—(A) Except as otherwise provided in this paragraph (a)(1) and paragraph (a)(2) of this section, §§ 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur on or after February 23, 2000.

(B) The rules of §§ 1.367(b)–3 and 1.367(b)–4, as they apply to reorganizations described in section 368(a)(1)(A) (including reorganizations described in section 368(a)(2)(D) or (E)) involving a foreign acquiring or foreign acquired corporation, apply only to transfers occurring on or after January 23, 2006.

(C) The second sentence of paragraph (a) in § 1.367(b)–4 applies to section 304(a)(1) transactions occurring on or after February 23, 2006; however, taxpayers may rely on this sentence for all section 304(a)(1) transactions occurring in open taxable years.

(D) Section 1.367(b)–1(c)(2)(v), (c)(3)(ii)(A), (c)(4)(iv), (c)(4)(v), § 1.367(b)–2(j)(1)(i), (l), and § 1.367(b)–3(e) and (f), apply to section 367(b) exchanges that occur on or after November 6, 2006. For guidance with respect to § 1.367(b)–1(c)(3)(ii)(A) and (c)(4)(iv) and (v) and § 1.367(b)–2(j)(1)(i) for exchanges that occur before November 6, 2006, see 26 CFR part 1 revised as of April 1, 2006.

(E) Section 1.367(b)–4(b)(1)(ii) and § 1.367(b)–4(b)(1)(iii), *Examples 4* and *5* apply to section 367(b) exchanges that occur on or after the date that is 30 days after the date these regulations are published as final regulations in the **Federal Register**. For guidance with respect to § 1.367(b)–4(b)(1)(ii) and § 1.367(b)–4(b)(1)(iii), *Example 4*, for exchanges that occur before the date 30 days after the date these regulations are published as final regulations in the **Federal Register**, see 26 CFR part 1 revised as of April 1 for the year before the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 8. For each entry in the table in the ''Section'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place.

Section	Remove	Add
1.1248–1(a)(1), second to last sentence.	1248(f)	1248(g)
1.1248–1(a)(1), last sentence.	1248(g)	1248(h)
1.1248–3(a)(6), first sentence.	1.1248–4	1.1248–2
1.1248–3(a)(6), first sentence.	1.1248–7	1.1248–8
1.1248–7(a)(1), second to last sentence.	1248(g)	1248(h)

Par. 9. Section 1.1248–1 is amended by:

1. Revising paragraphs (b) and (e).
2. Revising the second sentence of paragraph (c).

The revisions to read as follows.

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(b) *Sale or exchange*. For purposes of this section and §§ 1.1248–2 through 1.1248–8, the term *sale or exchange* includes the receipt of a distribution that is treated as in exchange for stock under section 302(a) (relating to distributions in redemption of stock) or section 331(a) (relating to distributions in complete liquidation of a corporation).

(c) * * * Thus, for example, if a United States person exchanges stock in a foreign corporation and no gain is recognized on such exchange under section 332, 351, 354, 355, or 361, taking into account the application of section 367, then no amount is includible in the gross income of such person as a dividend under section 1248(a).

* * * * *

(e) *Exceptions*. Under section 1248(g), this section and §§ 1.1248–2 through 1.1248–8 shall not apply to:

(1) Distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies; or

(2) Any amount to the extent that such amount is, under any other provision of the Internal Revenue Code (Code), treated as (i) a dividend, (ii) gain from the sale of an asset which is not a capital asset, or (iii) gain from the sale of an asset held for not more than 1 year.

* * * * *

Par. 10. Section 1.1248–6 is amended by:

1. Adding a new sentence at the end of paragraph (a).
2. Adding paragraphs (d) and (e).

The additions to read as follows:

1.1248–6 Sale or exchange of stock in certain domestic corporations.

(a) * * * See paragraph (d) of this section for a rule suspending the application of this section in certain circumstances.

* * * * *

(d) *Temporary suspension of section 1248(e)*. Section 1248(e) and the rules of this section shall not apply to a sale, exchange, or other disposition of the stock of a domestic corporation during a period when capital gains are taxed at a rate that equals or exceeds the rate at which ordinary income is taxed.

(e) *Effective/applicability date*. Paragraph (d) of this section shall apply to a sale, exchange, or other disposition of the stock of a domestic corporation on or after September 21, 1987.

Par. 11. Section 1.1248–8 is amended by:

1. Revising paragraphs (a)(3), (b)(1)(iv)(A), (b)(2)(i), and (d).
2. Adding new paragraph (b)(2)(iv).

The revisions and addition to read as follows:

§ 1.1248–8 Earnings and profits attributable to stock following certain nonrecognition transactions.

(a) * * *

(3) *Application of section 381*. Stock of a foreign corporation that receives assets in a transfer to which section 361(a) or (b) applies in connection with a reorganization described in section 368(a)(1)(A), (C), (D), (F), or (G), or in a distribution to which section 332 applies, and to which section 381(c)(2)(A) and § 1.381(c)(2)–1(a) apply. See paragraph (b)(6) of this section; or

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 354, 356, or 361(a) or (b), stock in an acquired corporation for stock in either a foreign acquiring corporation or a foreign corporation that is in control, within the meaning of section 368(c), of an acquiring corporation (whether domestic or foreign); or

* * * * *

(2) * * *

(i) *Exchanging shareholder exchanges property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder.* Except as provided in paragraph (b)(2)(iv) of this section, where the exchanging shareholder exchanges in a restructuring transaction property that is not stock of a foreign acquired corporation with respect to which the exchanging shareholder is a section 1248 shareholder or a foreign corporate shareholder immediately before such transaction, the earnings and profits attributable to the stock that the exchanging shareholder receives in the restructuring transaction shall be determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(1) holding period in that stock that is before the restructuring transaction. See paragraph (b)(7) Example 1 of this section.

* * * * *

(iv) *Exchanging shareholder exchanges stock of a domestic acquired corporation for stock of a foreign corporation with respect to which the exchanging shareholder is a section 1248 shareholder after the exchange.* If in a restructuring transaction described in § 1.1248(f)–2(c) and to which the exception provided by § 1.1248(f)–2(c)(1) applies, the earnings and profits attributable to a portion of a share of stock of a foreign corporation created pursuant to § 1.1248(f)–2(c)(2) (or a whole share, if no division is required) shall be determined pursuant to paragraphs (b)(2)(iv)(A) and (B) of this section.

(A) The earnings and profits attributable to a portion of a share of stock created pursuant to § 1.1248(f)–2(c)(2)(i) (or a whole share, if no division is required) shall be the earnings and profits attributable to the stock of the foreign corporation received by the section 1248 shareholder under section 354, 355, or 356 determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(1) holding period in that stock that is before the restructuring transaction.

(B) The earnings and profits attributable to a portion of a share of stock created under § 1.1248(f)–2(c)(2)(ii) (or whole share, if no division is required) shall be the sum of—

(*1*) The earnings and profits attributable to the stock of the foreign corporation transferred in the section 361 exchange that relates to such portion (or share) multiplied by the section 1248 shareholder's ownership interest (by value) in the domestic distributing corporation at the time of the restructuring transaction; and

(*2*) The earnings and profits attributable to the stock of the foreign corporation received by the section 1248 shareholder under section 354, 355, or 356 determined in accordance with § 1.1248–2 or § 1.1248–3, whichever is applicable, without regard to any portion of the section 1223(1) holding period in that stock that is before the restructuring transaction. See § 1.1248(f)–2(d), *Examples 2* through *4.*

* * * * *

(d) *Effective/applicability dates*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, this section applies to income inclusions that occur on or after July 30, 2007.

(2) *Exception.* Paragraph (b)(2)(iv) of this section applies to restructuring transactions occurring on or after the date 30 days after the date these regulations are published as final regulations in the **Federal Register**.

Par. 12. Section 1.1248(f)–1 is added to read as follows:

§ 1.1248(f)–1 Certain nonrecognition distributions.

(a) *Scope and purpose.* This section and §§ 1.1248(f)–2 and 1.1248(f)–3 provide rules that apply when a domestic corporation (domestic distributing corporation) distributes stock of a foreign corporation (foreign distributed corporation) in a distribution to which section 337, 355, or 361 applies. The purpose of this section is to confirm the general rule of section 1248(f)(1) that requires the domestic distributing corporation to include in gross income the section 1248 amount or section 1248(f) amount, as applicable, that is attributable to the stock of the foreign distributed corporation distributed under section 337, 355, or 361, and to provide exceptions to the general rule to the extent the section 1248 amount or section 1248(f) amount, as applicable, can be preserved immediately following the distribution in the hands of a distributee that is a domestic corporation. This section provides the general rule and definitions. Section 1.1248(f)–2 provides the exceptions to the general rule. Section 1.1248(f)–3 provides a reasonable cause exception for a failure to comply with certain requirements of § 1.1248(f)–2. Section 1.1248(f)–3 also provides the effective dates of this section and § 1.1248(f)–2.

(b) *General rule*—(1) *Section 337 distributions.* Except as provided in § 1.1248(f)–2(a), a domestic distributing corporation that is a section 1248 shareholder of a foreign distributed corporation and that distributes stock of such corporation in a distribution to which section 337 applies (section 337 distribution), shall, notwithstanding any other provision of subtitle A, include in gross income as a dividend the section 1248 amount attributable to the distributed stock. This paragraph (b)(1) shall apply only to the extent the domestic distributing corporation does not recognize gain on the section 337 distribution under any other provision of subtitle A.

(2) *Certain section 355 distributions.* Except as provided in § 1.1248(f)–2(b), a domestic distributing corporation that is a section 1248 shareholder of a foreign distributed corporation and that distributes stock of such corporation, other than stock received in a section 361 exchange, in a distribution to which section 355 applies (section 355 distribution), shall, notwithstanding any other provision of subtitle A, include in gross income as a dividend the section 1248 amount attributable to the distributed stock. This paragraph (b)(2) shall apply only to the extent the domestic distributing corporation does not recognize gain on the section 355 distribution under any other provision of subtitle A.

(3) *Distributions pursuant to a plan of reorganization.* Except as provided in § 1.1248(f)–2(c), a domestic distributing corporation that is a section 1248 shareholder of a foreign distributed corporation and that distributes stock of such corporation received in a section 361 exchange in a section 355 distribution or a distribution to which section 361 applies (section 361 distribution), shall, notwithstanding any other provision of subtitle A, include in gross income as a dividend the section 1248(f) amount attributable to the stock distributed. This paragraph (b)(3) shall apply without regard to the amount of gain realized by the domestic distributing corporation on the distribution.

(c) *Definitions.* Except as otherwise provided, the following definitions apply for purposes of this section and §§ 1.1248(f)–2 and 1.1248(f)–3.

(1) *80-percent distributee* is a corporation described in section 337(c).

(2) *Block of stock* has the meaning set forth in § 1.1248–2(b).

(3) *Distributee* is a shareholder of the domestic distributing corporation that receives stock of a foreign distributed corporation in a section 355 distribution or section 361 distribution.

(4) *Postdistribution amount* is the section 1248 amount attributable to the stock of a foreign distributed

corporation received (or deemed received) by a distributee, computed immediately after the distribution but without taking into account any adjustments to the basis of such stock under § 1.1248(f)–2(b)(3) or (c)(3). The postdistribution amount attributable to stock of a foreign distributed corporation received in a section 355 distribution described in paragraph (b)(2) of this section shall be determined based on the distributee's holding period in such stock as adjusted under § 1.1248(f)–2(b)(2). The postdistribution amount attributable to stock of a foreign distributed corporation received in a section 355 distribution or section 361 distribution described in paragraph (b)(3) of this section shall be determined after applying the rules in §§ 1.1248–8(b)(2)(iv) and 1.1248(f)–2(c)(2).

(5) *Section 358 basis* is the basis of stock determined under section 358 and the regulations under that section.

(6) *Section 361 exchange* is an exchange described in section 361(a) or (b).

(7) *Section 1248 amount* is the net positive earnings and profits (if any) attributable to the stock of the foreign distributed corporation under § 1.1248–2 or § 1.1248–3 (as adjusted by § 1.1248–8) and that would be included in gross income as a dividend under section 1248(a) if the stock were sold by the holder of such stock.

(8) *Section 1248(f) amount* is the aggregate amount of the net positive earnings and profits (if any) attributable to the stock of each foreign corporation, under § 1.1248–2 or § 1.1248–3 (as adjusted by § 1.1248–8), transferred by the domestic distributing corporation to the foreign distributed corporation in the section 361 exchange that precedes the section 355 distribution or section 361 distribution of the stock of the foreign distributed corporation, and that would be included in gross income as a dividend under section 964(e) by the foreign distributed corporation if it sold such stock immediately after the section 361 exchange. The section 1248(f) amount is attributable to the stock of the foreign distributed corporation received in the section 361 exchange.

(9) *Section 1248 shareholder* is a domestic corporation that satisfies the ownership requirements of section 1248(a)(2) with respect to a foreign corporation.

(10) *Timely-filed return* is a U.S. income tax return filed on or before the due date set forth in section 6072(b), plus any extension of time to file such return granted under section 6081.

Par. 13. Section 1.1248(f)–2 is added to read as follows:

§ 1.1248(f)–2 Exceptions for certain distributions.

(a) *Section 337 distributions.* Section 1.1248(f)–1(b)(1) shall not apply to a section 337 distribution of stock of the foreign distributed corporation if the conditions of paragraphs (a)(1) through (a)(3) of this section are satisfied.

(1) *80-percent distributee is a section 1248 shareholder.* Immediately after the section 337 distribution, the 80-percent distributee is a section 1248 shareholder with respect to the foreign distributed corporation.

(2) *Holding period.* The 80-percent distributee is treated as holding the stock of the foreign distributed corporation received in the section 337 distribution for the period during which the stock was held by the domestic distributing corporation.

(3) *Basis.* The 80-percent distributee's basis in the stock of the foreign distributed corporation received in the section 337 distribution does not exceed the domestic distributing corporation's basis in such stock at the time of the section 337 distribution.

(b) *Certain section 355 distributions.* Section 1.1248(f)–1(b)(2) shall not apply to a section 355 distribution of stock of the foreign distributed corporation not received by the domestic distributing corporation in a section 361 exchange to a distributee that is a section 1248 shareholder with respect to the foreign distributed corporation immediately after the distribution, if the domestic distributing corporation and all such section 1248 shareholders elect to apply the provisions of this paragraph (b) in accordance with paragraph (b)(1) of this section. See paragraphs (b)(2) and (b)(3) of this section for adjustments that occur as a result of electing to apply the provisions of this paragraph (b).

(1) *Election and reporting*—(i) *Statement required by section 1248 shareholders and domestic distributing corporation*—(A) *In general.* The domestic distributing corporation and the section 1248 shareholders elect to apply the provisions of paragraph (b) of this section by each including a statement, described in paragraph (b)(1)(i)(B) of this section, with its timely-filed return for the taxable year during which the section 355 distribution occurs and by entering into a written agreement described in paragraph (b)(1)(ii) of this section. If the domestic distributing corporation or a section 1248 shareholder is a member of a consolidated group at the time of the section 355 distribution, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or section 1248 shareholder. The election made under this paragraph (b)(1) is irrevocable.

(B) *Form and content.* The statement of election must be entitled, STATEMENT TO ELECT TO APPLY EXCEPTION UNDER § 1.1248(f)–2(b). The statement must state that the domestic distributing corporation and each section 1248 shareholder have entered into a written agreement described in paragraph (b)(1)(ii) of this section and must set forth the adjustment to each section 1248 shareholder's holding period or section 358 basis (if any) in the stock of the foreign distributed corporation received in the section 355 distribution required under paragraph (b)(2) or (b)(3) of this section.

(ii) *Written agreement.* The domestic distributing corporation and the section 1248 shareholders must enter into a written agreement described in this paragraph (b)(1)(ii) on or before the due date (including extensions) of the domestic distributing corporation's U.S. income tax return for the taxable year during which the section 355 distribution occurs. Each party to the agreement must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001–1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the section 355 distribution occurs. The agreement must—

(A) State the document is an agreement under paragraph (b)(1)(ii) of this section;

(B) Identify the domestic distributing corporation and each section 1248 shareholder;

(C) With respect to each section 1248 shareholder, state the holding period in the stock of the foreign distributed corporation received in the section 355 distribution as adjusted under paragraph (b)(2) of this section; and

(D) With respect to each section 1248 shareholder, identify the section 358 basis of the stock of the foreign distributed corporation received in the section 355 distribution and the adjustment (if any) to such basis under paragraph (b)(3) of this section.

(2) *Holding period adjustment.* For purposes of section 1248, immediately after the section 355 distribution, each section 1248 shareholder's holding period in the stock of the foreign distributed corporation received in the section 355 distribution shall equal the domestic distributing corporation's

holding period in such stock at the time of the distribution.

(3) *Basis adjustments*. If the domestic distributing corporation's section 1248 amount attributable to the stock of the foreign distributed corporation received by a section 1248 shareholder in the section 355 distribution exceeds the section 1248 shareholder's postdistribution amount attributable to such stock (excess amount), the section 1248 shareholder's section 358 basis in such stock is reduced by such excess amount. For an illustration of the rule in this paragraph (b)(3), see paragraph (d) of this section, *Examples 1* and *4*.

(c) *Distributions pursuant to a plan of reorganization.* Section 1.1248(f)–1(b)(3) shall not apply to a section 355 distribution or section 361 distribution of stock of the foreign distributed corporation received by the domestic distributing corporation in the section 361 exchange that precedes the distribution, to a distributee that is a section 1248 shareholder with respect to the foreign distributed corporation immediately after the distribution, if the domestic distributing corporation and all such section 1248 shareholders elect to apply the provisions of this paragraph (c) in accordance with paragraph (c)(1) of this section. See paragraphs (c)(2) and (c)(3) of this section for the adjustments that result from electing to apply the provisions of this paragraph (c). The adjustments provided in paragraphs (c)(2) and (c)(3) of this section shall apply after any adjustments required under section 367(a)(5) and § 1.367(a)–7(c). For illustrations of this exception, see paragraph (d) of this section, *Examples 2* through *4*.

(1) *Election and reporting*—(i) *Statement required by section 1248 shareholders and domestic distributing corporation*—(A) *In general*. The domestic distributing corporation and the section 1248 shareholders elect to apply the provisions of paragraph (c) of this section by each including a statement, in the form and with the content listed in paragraph (c)(1)(i)(B) of this section, with its timely-filed return for the taxable year during which the distribution occurs and by entering into a written agreement described in paragraph (c)(1)(ii) of this section. If the domestic distributing corporation or a section 1248 shareholder is a member of a consolidated group at the time of the distribution, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or section 1248 shareholder. The election made under this paragraph (c)(1) is irrevocable.

(B) *Form and content*. The statement of election must be entitled, STATEMENT TO APPLY EXCEPTION UNDER § 1.1248(f)–2(c). The statement must state that the domestic distributing corporation and each section 1248 shareholder have entered into a written agreement described in paragraph (c)(1)(ii) of this section and must describe, with respect to each section 1248 shareholder, the extent to which the shares of stock of the foreign distributed corporation received in the section 361 distribution are divided into portions under paragraph (c)(2) of this section and any adjustments to the section 358 basis of such stock under paragraph (c)(3) of this section.

(ii) *Written agreement*. The domestic distributing corporation and the section 1248 shareholders must enter into a written agreement described in this paragraph (c)(1)(ii) on or before the due date (including extensions) of the U.S. transferor's U.S. income tax return for the taxable year during which the distribution occurs. Each party to the agreement must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001–1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the distribution occurs. The agreement must—

(A) State the document is an agreement under paragraph (c)(1)(ii) of this section;

(B) Identify the domestic distributing corporation and each section 1248 shareholder;

(C) With respect to each section 1248 shareholder, describe the extent to which the shares of stock of the foreign distributed corporation are divided into portions under paragraph (c)(2) of this section;

(D) With respect to each section 1248 shareholder, state the amount of any adjustment to the section 358 basis of the stock of the foreign distributed corporation under paragraph (c)(3) of this section; and

(E) With respect to each section 1248 shareholder, state the amount of earnings and profits attributable to the stock of the foreign distributed corporation received in the distribution. See § 1.1248–8(b)(2)(iv).

(2) *Portions.* If the domestic distributing corporation transfers property to the foreign distributed corporation in the section 361 exchange that precedes the section 355 distribution or section 361 distribution, other than a single block of stock of a foreign corporation with respect to which the domestic distributing corporation is a section 1248 shareholder at the time of the section 361 exchange, then each share of stock of the foreign distributed corporation received by a section 1248 shareholder in the distribution must be divided into portions as follows:

(i) One portion attributable to all property transferred in the section 361 exchange, other than stock of a foreign corporation with respect to which the domestic distributing corporation is a section 1248 shareholder at the time of the section 361 exchange; and

(ii) One portion attributable to each block of stock of a foreign corporation transferred in the section 361 exchange with respect to which the domestic distributing corporation is a section 1248 shareholder at the time of the section 361 exchange. For the determination of the earnings and profits attributable to a portion of a share of stock of the foreign distributed corporation, see § 1.1248–8(b)(2)(iv).

(3) *Basis adjustments*. If the section 1248(f) amount attributable to a portion of a share of stock (or whole share, if no division is required) of the foreign distributed corporation received (or deemed received) by a section 1248 shareholder in the distribution exceeds the section 1248 shareholder's postdistribution amount attributable to such portion (or whole share, if no division is required) (excess amount), then the section 1248 shareholder's section 358 basis in such portion (or whole share, if no division is required) as adjusted under § 1.367(a)–7(c)(3), is reduced by such excess amount. For an illustration of this rule, see paragraph (d) of this section, *Example 3*.

(4) *Rules applicable to divided shares of stock*—(i) *Basis*. The basis of a portion of a share of stock of the foreign distributed corporation created under paragraph (c)(2) of this section is that amount of the section 1248 shareholder's section 358 basis (as adjusted under § 1.367(a)–7(c)(3)) in the share of stock that bears the same ratio that the fair market value of the property received by the foreign distributed corporation in the section 361 exchange to which such portion relates bears to the aggregate fair market value of all property received by the foreign distributed corporation in the section 361 exchange. For illustrations of this rule, see paragraph (d) of this section, *Examples 2* and *3*.

(ii) *Fair market value*. The fair market value of a portion of a share of stock of the foreign distributed corporation created under paragraph (c)(2) of this section is that amount of the fair market value of the share of stock of the foreign

corporation that bears the same ratio that the fair market value of the property received by the foreign distributed corporation in the section 361 exchange to which such portion relates bears to the aggregate fair market value of all property received by the foreign distributed corporation in the section 361 exchange. For illustrations of this rule, see paragraph (d) of this section, *Examples 2* and *3*.

(iii) *Rules for subsequent exchanges*. For purposes of determining the gain realized on the sale or exchange of a share of stock of the foreign distributed corporation that has a divided portion pursuant to paragraph (c)(2) of this section, the amount realized on the sale or exchange of such share shall be allocated to each divided portion based on the relative fair market value of the property to which such portion relates as determined at the time of the section 361 exchange.

(iv) *Duration of divided shares*. Shares of stock of the foreign distributed corporation that are divided into portions under paragraph (c)(2) of this section are not required to be divided as of the date on which section 1248(a) would not apply to a sale or exchange of such shares.

(d) *Examples.* The rules of this section are illustrated by the following examples. The analysis of the examples is limited to a discussion of issues under this section. For purposes of the examples, unless otherwise indicated, assume: DP1, DP2, DP3, DC, and USD are domestic corporations; X is a United States resident individual; FP and FA are foreign corporations that are not, and have never been, controlled foreign corporations; CFC1, CFC2, and FC are controlled foreign corporations; each corporation has a single class of stock outstanding and uses the calendar year as its taxable year; each shareholder owns a single block of stock in each corporation; DC owns Business A, which consists solely of section 367(a) property that could satisfy the requirements of the active foreign trade or business exception under section 367(a)(3) and § 1.367(a)–2T; and DC owns no other assets and has no liabilities. Further assume the requirements in § 1.367(a)–7(c)(5) are satisfied, any requirement to file a gain recognition agreement is satisfied, and no earnings and profits of a foreign corporation are described in section 1248(d).

Example 1. Section 355 distribution, gain recognition, and adjustment to stock basis—(i) *Facts.* DP1, FP, and X own 80%, 10%, and 10%, respectively, of the outstanding stock of USD. DP1's USD stock has a $140x basis, a $160x fair market value, and a 2 year holding period. USD wholly owns FC. USD's FC stock has a $50x basis, a $100x fair market value, a $25x section 1248 amount, and a 3 year holding period. On December 31, Year 3, USD distributes all of the FC stock to DP1, FP, and X on a pro-rata basis in a section 355 distribution. The fair market value of the FC stock received by DP1, FP and X is $80x, $10x, and $10x, respectively. After the distribution, DP1's section 358 basis in its FC stock is $70x.

(ii) *Result.* (A) Under § 1.367(e)–1(b)(1), USD must recognize $5x gain on the distribution of FC stock to FP (10% of the $50x gain in the FC stock). Under § 1.367(b)–5(b)(1)(ii), USD must recognize $5x gain on the distribution of FC stock to X (10% of the $50x gain in the FC stock). Of the aggregate $10x gain recognized by USD, $5x is recharacterized as a dividend under section 1248(a) (20% of the section 1248 amount ($25x) attributable to the FC stock). See § 1.1248–1 for additional consequences.

(B) USD's distribution of FC stock to DP1 is described in section 1248(f)(1) and § 1.1248(f)–1(b)(2). As a result, USD must generally include in gross income as a dividend the section 1248 amount attributable to such stock ($20x, or 80% of the $25x section 1248 amount). However, if DP1 and USD elect to apply the rules of paragraph (b) of this section (as provided in paragraph (b)(1) of this section), § 1.1248(f)–1(b)(2) shall not apply to USD's distribution of FC stock to DP1. If DP1 and USD make that election, then:

(1) Under paragraph (b)(2) of this section, for purposes of section 1248, immediately after the distribution DP1 will have a 3 year holding period in the FC stock received in the section 355 distribution, the same holding period USD had in such stock at the time of the distribution.

(2) Under paragraph (b)(3) of this section, DP1's section 358 basis in the FC stock ($70x) received in the distribution is reduced by $10x, the amount by which USD's section 1248 amount ($20x) attributable to such FC stock exceeds DP1's postdistribution amount ($10x) attributable to such stock. As adjusted under paragraph (b)(3) of this section, DP1's basis in the FC stock is $60x. Under § 1.1248(f)–1(c)(4), DP1's postdistribution amount ($10x) equals the amount that DP1 would include in gross income as a dividend under section 1248(a) if it sold the FC stock immediately after the distribution ($80x fair market value, $70x basis, and $20x earnings and profits attributable to the FC stock for purposes of section 1248 taking into account DP1's 3-year holding period in such stock as required by paragraph (b)(2) of this section).

Example 2. Section 361 distribution —(i) *Facts.* DP1, DP2, and FP own 50, 30, and 20, respectively, of the 100 outstanding shares of stock of DC. DP1's DC stock has a $180x basis and a $200x fair market value. DP2's DC stock has a $100x basis and $120x fair market value. DC owns Business A and wholly owns CFC1 and CFC2. DC's Business A has a $10x basis and a $200x fair market value. DC's CFC1 stock has a $20x basis, a $40x fair market value, and $30x of earnings and profits attributable to it for purposes of section 1248(a). DC's CFC2 stock has a $30x basis, a $160x fair market value and $150x of earnings and profits attributable to it for purposes of section 1248(a). On December 31, Year 3, in a reorganization described in section 368(a)(1)(D), DC transfers CFC1, CFC2 and Business A to FA in exchange for 60 shares of FA stock. DC's transfer of CFC1, CFC2 and Business A to FA in exchange for the 60 shares of FA stock qualifies as a section 361 exchange. DC distributes the FA stock to DP1, DP2 and FP on a pro-rata basis in a section 361 distribution. DP1, DP2 and FP exchange their DC stock for 30, 18, and 12 shares, respectively, of FA stock pursuant to section 354. After the reorganization, FA has 100 shares of stock outstanding. DP3 owns the other 40 shares of FA stock.

(ii) *Result.* (A) In general, under section 367(a)(5) and § 1.367(a)–7(b), DC's transfer of the stock of CFC1 and CFC2 and Business A to FA is subject to the general rule of section 367(a)(1). As a result, DC must generally recognize gain on the transfer of such property to FA in the section 361 exchange. However, if the conditions and requirements of § 1.367(a)–7(c) are met (which includes the making of the election under § 1.367(a)–7(c)(5)), DC's transfer of the stock of CFC1 and CFC2 and Business A to FA may, in part, be eligible for the exceptions to section 367(a)(1) provided by §§ 1.367(a)–2T and –3. See §§ 1.367(a)–2T and –3(b) for additional requirements. In addition, DC may not be required to include in income the section 1248 amount attributable to the CFC1 and CFC2 stock under § 1.367(b)–4(b)(1). However, if the exception provided under paragraph (c) of this section does not apply, then under § 1.1248(f)–1(b)(3) DC must include in gross income as a dividend the section 1248(f) amounts attributable to the FA stock distributed. DC must include in income as a dividend the section 1248(f) amount attributable to the FA stock distributed to FP even if the exception provided by § 1.367(a)–7(c) applies.

(B) The requirement of § 1.367(a)–7(c)(1) is satisfied because DC is controlled (within the meaning of section 368(c)) by DP1 and DP2 at the time of the section 361 exchange.

(C) Under § 1.367(a)–7(c)(2)(i), DC must recognize $68x gain on the section 361 exchange with respect to FP. The $68x gain equals the product of FP's 20% ownership interest in DC (by value) at the time of the section 361 exchange and the $340x inside gain. The inside gain equals the excess of the aggregate gross fair market value of the section 367(a) property ($400x) over the $60x inside basis. Under § 1.367(a)–7(e)(1), the $68x gain recognized is allocated among the CFC1 stock, the CFC2 stock and Business A in proportion to the amount of gain realized by DC on the transfer of such property. The amount allocated to the CFC1 stock is $4x ($68x gain multiplied by $20x/$340x). The amount allocated to the CFC2 stock is $26x ($68x gain multiplied by $130x/$340x). The amount allocated to Business A is $38x ($68x gain multiplied by $190x/$340x). Under § 1.367(a)–1T(b)(4)(i)(B) and section 362(b), the basis of each asset is increased by the amount of gain allocated to such asset. Under section 1248(a), DC must include in gross income as a dividend the $4x gain recognized with respect to the CFC1 stock (20% of the $20x section 1248 amount attributable to

such stock) and the $26x gain recognized with respect to CFC2 stock (20% of the $130x section 1248 amount attributable to such stock). If the built-in gain in the CFC1 stock or CFC2 stock exceeded the section 1248 amount attributable to such stock, the amount of the gain recognized by DC on the transfer of such stock in the section 361 exchange recharacterized as a dividend under section 1248(a) would be less.

(D) DC is not required to recognize gain on the section 361 exchange under § 1.367(a)–7(c)(2)(ii) with respect to DP1 or DP2. With respect to DP1, the product of the inside gain ($340x) and DP1's 50% ownership interest (by value) in DC at the time of the section 361 exchange (or $170x) does not exceed the product of the section 367(a) percentage (100%) and the fair market value of the FA stock received by DP1 ($200x). With respect to DP2, the product of the inside gain ($340x) and DP2's 30% ownership percentage (by value) in DC at the time of the section 361 exchange (or $102x) does not exceed the product of the section 367(a) percentage (100%) and the fair market value of the FA stock received by DP2 ($120x).

(E) Under § 1.367(a)–7(c)(3), DP1's section 358 basis ($180x) in the FA stock received in the section 361 distribution is reduced by $150x, the amount by which DP1's 50% share of inside gain ($170x) exceeds DP1's $20x outside gain. DP1's share of inside gain is not reduced under § 1.367(a)–7(c)(2)(ii) because DC did not recognize gain with respect to DP1. DP1's $20x outside gain equals the product of the section 367(a) percentage (100%) and the excess of the fair market value of the FA stock received by DP1 ($200x) over the section 358 basis of such stock ($180x). As adjusted, DP1's basis in the FA stock is $30x. Similarly, DP2's section 358 basis ($100x) in the FA stock received in the section 361 distribution is reduced by $82x, the amount by which DP2's 30% share of inside gain ($102x) exceeds DP1's $20x outside gain. DP2's share of inside gain is not reduced under § 1.367(a)–7(c)(2)(ii) because DC did not recognize gain with respect to DP2. DP2's $20x outside gain equals the product of the section 367(a) percentage (100%) and the excess of the fair market value of the FA stock received by DP2 ($120x) over the section 358 basis of such stock ($100x). As adjusted, DP2's basis in the FA stock is $18x.

(F) Under § 1.367(a)–7(c)(4)(i), DC must comply with the requirements of § 1.6038B–1(c)(6)(iii) with respect to Business A. Under § 1.367(a)–7(c)(4)(ii), DC is not required to comply with the requirements of § 1.6038B–1(c)(6)(iii) with respect to the stock of CFC1 or CFC2.

(G) DC is not required to include in income as a dividend the remaining section 1248 amount attributable to the stock of CFC1 ($16x) or CFC2 ($104x) under § 1.367(b)–4(b)(1)(i) because immediately after the section 361 exchange, FA, CFC1, and CFC2 are controlled foreign corporations with respect to which DC is a section 1248 shareholder.

(H) Under § 1.1248(f)–1(b)(3), DC must generally include in gross income as a dividend the section 1248(f) amount ($120x) attributable to the FA stock distributed to DP1, DP2 and FA in the section 361 distribution. The section 1248(f) amount equals the sum of the amounts that FA would include in income as a dividend under section 964(e) if it sold the CFC1 stock ($16x gain and $26x earnings and profits attributable to such stock—calculated in paragraph (K)(3) of this *Example*) and CFC2 stock ($104x gain and $124x earnings and profits attributable to such stock—calculated in paragraph (K)(3) of this *Example*) immediately after the section 361 exchange.

(I) [Reserved.]

(J) However, if DP1, DP2, and DC elect to apply the provisions of paragraph (c) of this section (as provided in paragraph (c)(1) of this section), then § 1.1248(f)–1(b)(3) shall not apply to DC's distribution of FA stock to DP1 and DP2. Even if such election is made, however, DC must include in gross income as a dividend the section 1248(f) amount ($24x) attributable to the 12 shares of FA stock distributed to FP (20% of the $120x section 1248(f) amount.)

(K) If DP1, DP2, and DC elect to apply the provisions of paragraph (c) of this section, then under paragraph (c)(2) of this section each share of FA stock received by DP1 (30 shares) and DP2 (18 shares) is divided into portions attributable to the CFC1 stock, the CFC2 stock and Business A. Under paragraphs (c)(4)(i) and (ii) of this section, the basis and fair market value of each portion of each share of FA stock is that amount of the total basis and fair market value of the FA stock that bears the same ratio that the fair market value of the property (exchanged for such FA stock) to which such portion relates bears to the aggregate fair market value of all property exchanged for the FA stock in the section 361 exchange.

(*1*) With respect to DP1's 30 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $3x ($30x multiplied by $40x/$400x) and a fair market value of $20x ($200x multiplied by $40x/$400x); the portions attributable to the CFC2 stock have an aggregate basis of $12x ($30x multiplied by $160x/$400x) and a fair market value of $80x ($200x multiplied by $160x/$400x), and the portions attributable to Business A have an aggregate basis of $15x ($30x multiplied by $200x/$400x) and a fair market value of $100x (50% of $200x).

(*2*) With respect to DP2's 18 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $1.8x ($18x multiplied by $40x/$400x) and a fair market value of $12x ($120x multiplied by $40x/$400x); the portions attributable to the CFC2 stock have an aggregate basis of $7.2x ($18x multiplied by $160x/$400x) and a fair market value of $48x ($120x multiplied by $160x/$400x); and the portions attributable to Business A have an aggregate basis of $9x ($18x multiplied by $200x/$400x) and a fair market value of $60x ($120x multiplied by $200x/$400x).

(*3*) Under § 1.1248–8(b)(2)(iv), the earnings and profits of CFC1 attributable to the portions of DP1's 30 shares of FA stock attributable to the CFC1 stock is $13x ($26x earnings and profits amount multiplied by DP1's 50% ownership interest (by value) in DC at the time of the section 361 exchange), and the earnings and profits of CFC2 attributable to the portions of DP1's 30 shares of FA stock attributable to the CFC2 stock is $62x ($124x earnings and profits amount multiplied by DP1's 50% ownership interest in DC at the time of the section 361 exchange). Similarly, the earnings and profits of CFC1 attributable to the portions of DP2's 18 shares of FA stock attributable to the CFC1 stock is $7.8x ($26x earnings and profits amount multiplied by DP2's 30% ownership interest (by value) in DC at the time of the section 361 exchange), and the amount of earnings and profits of CFC2 attributable to the portions of DP2's 18 shares of FA stock attributable to the CFC2 stock is $37.2x ($124x earnings and profits amount multiplied by DP2's 30% ownership interest (by value) in DC at the time of the section 361 exchange). The $26x earnings and profits with respect to the CFC1 stock equals the $30x earnings and profits amount attributable to the CFC1 stock immediately before the section 361 exchange reduced by the $4x included in income by DC as a dividend under section 1248(a) on the transfer of the CFC1 stock to FA in the section 361 exchange. The $124x earnings and profits with respect to CFC2 equals the $150x earnings and profits attributable to the CFC2 stock immediately before the section 361 exchange reduced by the $26x amount included in income by DC as a dividend under section 1248(a) on the transfer of the CFC2 stock to FA in the section 361 exchange. See sections 959(e) and 1248(d)(1).

(L) Under paragraph (c)(3) of this section, DP1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock attributable to the CFC1 stock or CFC2 stock. DP1's postdistribution amount ($13x) attributable to the portions of its FA shares attributable to the CFC1 stock exceeds its allocable share of the section 1248(f) amount attributable to the CFC1 stock immediately after the section 361 exchange ($8x, or 50% of $16x). DP1's postdistribution amount ($62x) attributable to the portions of its FA shares attributable to the CFC2 stock exceeds its allocable share of the section 1248(f) amount attributable to the CFC2 stock immediately after the section 361 exchange ($52x, or 50% of $104x).

(M) Similarly, DP2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock attributable to the CFC1 stock or CFC2 stock. DP2's postdistribution amount ($7.8x) attributable to the portions of its FA shares attributable to the CFC1 stock exceeds its allocable share of the section 1248(f) amount attributable to the CFC1 stock immediately after the section 361 exchange ($4.8x, or 30% of $16x). DP2's postdistribution amount ($37.2x) attributable to the portions of its FA shares attributable to the CFC2 stock exceeds its allocable share of the section 1248(f) amount attributable to the CFC2 stock immediately after the section 361 exchange ($31.2x, or 30% of $104x).

Example 3. Section 361 distribution and adjustment to stock basis. (i) *Facts.* DP1 wholly owns DC. DP1's DC stock has a $180x basis and a $200x fair market value. DC wholly owns CFC1 and CFC2. DC's CFC1 stock has a $70x basis, a $100x fair market

value, and $40x of earnings and profits attributable to it for purposes of section 1248. DC's CFC2 stock has a $130x basis, a $100x fair market value, and $80x of earnings and profits attributable to it for purposes of section 1248. On December 31, Year 1, in a reorganization described in section 368(a)(1)(F), DC transfers the CFC1 stock and the CFC2 stock to FA, a newly formed corporation, in exchange for 100 shares of FA stock. DC distributes the 100 shares of FA stock to DP1 in a section 361 distribution. DC's transfer of the stock of CFC1 and CFC2 to FA in exchange for FA stock qualifies as a section 361 exchange. DP1 exchanges its DC stock for the 100 shares of FA stock pursuant to section 354. DP1 and DC elect to apply the rules of § 1.367(a)–7(c) in accordance with § 1.367(a)–7(c)(5). DC is not required to recognize gain under § 1.367(a)–7(c)(2), and DP1 is not required to reduce its section 358 basis in the FA shares under § 1.367(a)–7(c)(3).

(ii) *Result.* (A) DC is not required to include in income as a dividend the section 1248 amount attributable to the CFC1 stock under § 1.367(b)–4(b)(1)(i) because, immediately after the section 361 exchange, FA and CFC1 are controlled foreign corporations with respect to which DC is a section 1248 shareholder. At the time of the section 361 exchange the section 1248 amount attributable to the CFC2 stock is zero.

(B) Under § 1.1248(f)–1(b)(3), DC must generally include in income as a dividend the section 1248(f) amount ($30x) attributable to the FA stock upon its distribution of such stock to DP1 in the section 361 distribution. The section 1248(f) amount is the amount that FA would include in income as a dividend under section 964(e) if it sold the CFC1 stock immediately after the section 361 exchange. Immediately after the section 361 exchange, the section 1248(f) amount attributable to the CFC2 stock is zero.

(C) However, if DP1 and DC elect to apply the rules of paragraph (c) of this section (as provided in paragraph (c)(1) of this section), then § 1.1248(f)–1(b)(3) shall not apply to DC's distribution of the FA stock to DP1. If that election is made then:

(*1*) Under paragraph (c)(2)(ii) of this section each share of FA stock received by DP1 is divided into one portion attributable to the CFC1 stock and one portion attributable to the CFC2 stock. Under paragraphs (c)(4)(i) and (ii) of this section, the basis and fair market value of each portion is that amount of the total section 358 basis and fair market value, respectively, of the FA stock that bears the same ratio that the fair market value of the property (the CFC1 stock and CFC2 stock) to which such portion relates bears to the aggregate fair market value of all property exchanged by DC for the FA stock in the section 361 exchange. Therefore, the portions attributable to the CFC1 stock have an aggregate basis of $90x ($180x multiplied by $100x/$200x) and a fair market value of $100x ($200x multiplied by $100x/$200x). The portions attributable to the CFC2 stock also have an aggregate basis of $90x ($180x multiplied by $100x/$200x) and a fair market value of $100x ($200x multiplied by $100x/$200x).

(*2*) Under § 1.1248–8(b)(2)(iv), the $40x earnings and profits attributable to the CFC1 stock at the time of the section 361 exchange are attributed to the portions of the shares of FA stock that relate to the CFC1 stock. Similarly, the $80x of earnings and profits attributable to the CFC2 stock are attributed to the portions of the 100 shares of the FA stock that relate to the CFC2 stock.

(*3*) Under paragraph (c)(3) of this section, DP1's aggregate section 358 basis in the portions of the 100 shares of FA stock attributable to the CFC1 stock ($90x) is reduced by $20x, the amount by which the section 1248(f) amount attributable to the CFC1 stock ($30x) exceeds DP1's postdistribution amount ($10x) with respect to the portions of the shares of FA stock attributable to the CFC1 stock. The postdistribution amount is the section 1248 amount attributable to the portions of the FA stock attributable to the CFC1 stock immediately after the section 361 distribution ($100x fair market value less $90x basis, and $40x earnings and profits attributable to such portions). As adjusted, DP1's aggregate basis in the portions of the shares of FA stock attributable to the CFC1 stock is $70x. No adjustment is required to DP1's aggregate basis in the portions of the FA stock attributable to the CFC2 stock because no portion of the $30x section 1248(f) amount is attributable to the CFC2 stock.

Example 4. Section 361 exchange followed by distribution of stock pursuant to plan of reorganization. (i) *Facts.* DP1 owns all 100 outstanding shares of stock of DC. DP1's DC stock has a $180x basis, $200x fair market value, and 2 year holding period. DC owns all 60 shares of the outstanding stock of CFC1. DC's CFC1 stock has a $50x basis, a $60x fair market value, $30x of earnings and profits attributable to it for purposes of section 1248, and a 3 year holding period. DC also owns all 40 shares of the outstanding stock of CFC2. DC's CFC2 stock has a $30x basis, a $40x fair market value, and $20x of earnings and profits attributable to it for purposes of section 1248. DC also owns Business A that has a fair market value of $100x. On December 31, Year 4, in a divisive reorganization described in section 368(a)(1)(D), DC transfers the CFC2 stock to CFC1 in exchange for 40 additional shares of CFC1 stock. DC then distributes the 100 shares of CFC1 stock to DP1. DC's transfer of the CFC2 stock to CFC1 qualifies as a section 361 exchange. DP1 and DC are eligible to and make the elections provided in § 1.367(a)–7(c)(5) and paragraphs (b) and (c) of this section.

(ii) *Result.* (A) DC is not required to recognize gain under § 1.367(a)–7(c)(2).

(B) Under section 358, DP1 must allocate the $180x pre-distribution section 358 basis in its DC stock between the shares of DC stock and the shares of CFC1 stock held after the distribution based on the relative fair market values of such shares. After the allocation of the pre-distribution basis, the basis of DP1's DC stock is $90x, and the basis of DP1's CFC1 stock is $90x. With respect to the $90x basis in the CFC1 stock, $36x is attributable to the 40 shares of CFC1 stock received by DC in the section 361 exchange, and $54x is attributable to the 60 shares of CFC1 stock owned by DC before the section 361 exchange.

(C) Pursuant to § 1.367(a)–7(c)(3)(ii)(A), any adjustment to basis required under § 1.367(a)–7(c)(3) applies only to the 40 shares of CFC1 stock received by DC in the section 361 exchange. Under § 1.367(a)–7(c)(3)(i), DP1 must reduce its section 358 basis ($36x) in the 40 shares of CFC1 stock by $6x, the amount by which DP1's 100% share of the inside gain ($10x) exceeds DP2's outside gain ($4x). DP1's share of inside gain is not reduced under § 1.367(a)–7(c)(2)(ii) because DC does not recognize gain on the transfer of the section 367(a) property in the section 361 exchange. The outside gain equals the product of the section 367(a) percentage (100%) and the amount by which the fair market value ($40x) of the 40 shares of CFC1 stock exceeds DP1's section 358 basis of such stock ($36x). After the $6x reduction to stock basis required under § 1.367(a)–7(c)(3), but before the application of § 1.1248(f)–2(c)(2), DP1's basis in such 40 shares of CFC1 stock is $30x.

(D) DC is not required to include in income as a dividend the section 1248 amount attributable to the CFC2 stock under § 1.367(b)–4(b)(1)(i), because immediately after the section 361 exchange CFC1 and CFC2 are both controlled foreign corporations with respect to which DC is a section 1248 shareholder.

(E) Because DP1 and DC elect to apply the rules under paragraph (c) of this section, § 1.1248(f)–1(b)(3) does not apply to DC's distribution to DP of the 40 shares of CFC1 stock received in the section 361 exchange.

(*1*) Under paragraph (c)(2) of this section, the 40 shares of CFC1 stock received by DC in the section 361 exchange are attributable to the CFC2 stock. Thus, the 40 shares are not required to be divided into portions under paragraph (c)(2) of this section because DC exchanged a single block of stock of CFC2 for the 40 shares of CFC1 stock in the section 361 exchange. The 40 shares of CFC1 stock have an aggregate basis of $30x (after the adjustment described in paragraph (C) of this Example) and fair market value of $40x.

(*2*) Under § 1.1248–8(b)(2)(iv), the $20x of earnings and profits attributable to the CFC2 stock at the time of the section 361 exchange are attributable to the 40 shares of CFC1 stock.

(*3*) DP1's basis ($30x) in the 40 shares of CFC1 stock attributable to the CFC2 stock is not required to be reduced under paragraph (c)(3) of this section because the section 1248(f) amount ($10x) attributable to the 40 shares of CFC1 stock does not exceed DP1's postdistribution amount ($10x) attributable to such stock. The postdistribution amount equals the amount that DP1 would be required to include in income as a dividend under section 1248(a) if it sold the 40 shares of CFC1 stock immediately after the distribution ($40x fair market value, $30x basis, and $20x earnings and profits attributable to such stock for purposes of section 1248). The $10x section 1248(f) amount equals the amount CFC1 would include in income as a dividend under section 964(e) if it sold the CFC2 stock received from DC immediately after the section 361 exchange.

(F) Because DP1 and DC make the election provided in paragraph (b)(1) of this section,

§ 1.1248(f)–1(b)(2) does not apply to DC's distribution to DP1 of the 60 shares of CFC1 stock it owned before the section 361 exchange.

(*1*) Under paragraph (b)(2) of this section, for purposes of section 1248, DP1 has a 3-year holding period in the 60 shares of CFC1 stock immediately after the distribution, the same holding period that DC had in such shares at the time of the distribution.

(*2*) Under paragraph (b)(3) of this section, DP1's section 358 basis in the 60 shares of CFC1 stock ($54x) must be reduced by $4x, the amount by which DC's section 1248 amount ($10x) attributable to such shares immediately before the distribution exceeds DP1's postdistribution amount ($6x) attributable to such shares immediately after the distribution. The $6x postdistribution amount equals the amount that DP1 would be required to include in income as a dividend under section 1248(a) if it sold the 60 shares of CFC1 stock immediately after the distribution ($60x fair market value, $54x basis, and $30x earnings and profits attributable to such stock for purposes of section 1248). After the reduction, DP1's basis in the 60 shares of CFC1 stock is $50x.

(e) *Applicable cross-references.* For rules relating to the attribution of earnings and profits to the stock of a foreign corporation following certain nonrecognition transactions, see § 1.1248–8. For rules relating to a transfer of property by a domestic corporation to a foreign corporation in a section 361 exchange that precedes a section 355 distribution or section 361 distribution to which section 1248(f)(1) applies, see § 1.367(a)–7. For rules relating to an acquisition of the stock of a foreign corporation by another foreign corporation in a section 361 exchange, see § 1.367(b)–4. For rules relating to a section 355 distribution of stock of a foreign corporation by a domestic corporation, see §§ 1.367(b)–5(b)(1) and 1.367(e)–1.

Par. 14. Section 1.1248(f)–3 is added to read as follows:

§ 1.1248(f)–3 Reasonable cause exception and effective dates.

(a) *Reasonable cause exception for failure to comply*—(1) *General rule.* If a section 1248 shareholder or the domestic distributing corporation fails to comply with any requirement under § 1.1248(f)–2, the section 1248 shareholder or the domestic distributing corporation shall be considered to have complied with such requirement if it submits a request for relief as provided under paragraph (a)(2) of this section and can demonstrate to the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the section 1248 shareholder's or domestic distributing corporation's tax return for the taxable year during which the distribution occurs, that such failure was due to reasonable cause and not willful neglect. Whether the failure to comply was due to reasonable cause and not willful neglect will be determined by the Director after considering all the facts and circumstances. The Director shall notify the section 1248 shareholder or domestic distributing corporation in writing within 120 days if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. For this purpose, the 120-day period shall begin on the date the Internal Revenue Service notifies the section 1248 shareholder or domestic distributing corporation in writing that the request for relief has been received and assigned for review. Once such period commences, if the section 1248 shareholder or domestic distributing corporation is not again notified within 120 days, then the section 1248 shareholder or domestic distributing corporation shall be deemed to have established reasonable cause.

(2) *Requirements for reasonable cause relief*—(i) *Time of submission.* Requests for reasonable cause relief will only be considered if as soon as the section 1248 shareholder or domestic distributing corporation becomes aware of the failure to comply with any requirement of § 1.1248(f)–2, the section 1248 shareholder or domestic distributing corporation attaches the statements or other documents that should have been filed, as well as a complete written statement setting forth the reasons for the failure to comply, to an amended return that amends the return to which the documents should have been attached pursuant to § 1.1248(f)–2. The amended return and all required attachments must be filed with the applicable Internal Revenue Service Center with which the section 1248 shareholder or domestic distributing corporation filed its original return to which the documents should have been attached.

(ii) *Notice requirement.* In addition to the requirement of paragraph (a)(2)(i) of this section, the section 1248 shareholder or domestic distributing corporation must comply with the requirements of paragraph (a)(2)(ii)(A) or (B) of this section, as applicable.

(A) If the section 1248 shareholder or domestic distributing corporation is under examination for any taxable year when the request for reasonable cause relief is filed, a copy of the amended return and attachments must be provided to the Internal Revenue Service personnel conducting the examination.

(B) If the section 1248 shareholder or domestic distributing corporation is not under examination for any taxable year when the request for reasonable cause relief is filed, a copy of the amended return and attachments must be provided to the Director having jurisdiction over the return.

(b) *Effective/applicability date.* Sections 1.1248(f)–1 and 1.1248(f)–2 and this section shall apply to distributions occurring on or after the date 30 days after the date these regulations are published as final regulations in the **Federal Register**.

Par. 15. Section 1.6038B–1 is amended by revising paragraphs (c)(6), (f)(3), and the heading and the first sentence of paragraph (g)(1), and adding paragraph (g)(5), to read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(c) * * *

(6) *Transfers subject to section 367(a)(5)*—(i) *In general.* This paragraph applies to a domestic corporation (U.S. transferor) that transfers section 367(a) property (as defined in § 1.367(a)–7(f)(9)) to a foreign corporation in an exchange described in section 361(a) or (b) or in an exchange described in section 351 that is also described in section 361(a) or (b) (collectively, a section 361 exchange) and to which the provisions of § 1.367(a)–7(c) apply. Paragraph (c)(6)(ii) of this section establishes the time and manner for the U.S. transferor to elect to apply the provisions of § 1.367(a)–7(c). Paragraph (c)(6)(iii) of this section establishes the manner for the U.S. transferor to satisfy the requirement of § 1.367(a)–7(c)(4).

(ii) *Election.* The U.S. transferor elects to apply the provisions of § 1.367(a)–7(c) by including a statement entitled, STATEMENT TO ELECT TO APPLY EXCEPTION UNDER § 1.367(a)–7(c) with its timely-filed return (within the meaning of § 1.367(a)–7(f)(11)) for the taxable year during which the section 361 exchange occurs, that includes the information described in paragraphs (c)(6)(ii)(A) through (c)(6)(ii)(C) of this section. See § 1.367(a)–7(c)(5)(ii) for the statement required to be filed by a control group member, as defined in § 1.367(a)–7(f)(2), or final distributee, as defined in § 1.367(a)–7(d).

(A) The name and taxpayer identification number of each control group member and final distributee (if any), and the aggregate ownership interest (by value) in the U.S. transferor of each control group member or final distributee.

(B) A calculation of the gain recognized (if any) by the U.S. transferor under § 1.367(a)–7(c)(2)(i) and (ii).

(C) The date on which the U.S. transferor and each control group member or final distributee entered into the written agreement described in § 1.367(a)–7(c)(5)(iv).

(iii) *Agreement to amend U.S. transferor's tax return.* The U.S. transferor complies with the requirement of § 1.367(a)–7(c)(4)(i) by attaching a statement to its timely-filed return (within the meaning of § 1.367(a)–7(f)(11)) for the taxable year in which the section 361 exchange occurs, entitled STATEMENT UNDER § 1.367(a)–7(c)(4) FOR TRANSFERS OF ASSETS TO A FOREIGN CORPORATION IN A SECTION 361 EXCHANGE. The statement must certify that if the foreign acquiring corporation disposes of a significant amount (as defined in paragraph (c)(6)(iii)(A) of this section) of the section 367(a) property received from the U.S. transferor in the section 361 exchange in one or more related transactions described in paragraph (c)(6)(iii)(B) of this section, then the exception provided in § 1.367(a)–7(c) shall not apply to the section 361 exchange and the U.S. transferor shall recognize the gain realized but not recognized in the section 361 exchange. The U.S. transferor (or the foreign acquiring corporation on behalf of the U.S. transferor) shall file a U.S. income tax return (or amended U.S. income tax return, as the case may be) for the year of the section 361 exchange, reporting such gain.

(A) *Disposition of significant amount.* For purposes of this paragraph (c)(6)(iii), a disposition of a significant amount occurs if, in one or more related transactions, the foreign acquiring corporation disposes of an amount of the section 367(a) property received from the U.S. transferor in the section 361 exchange that is greater than 40 percent of the fair market value of all of the property transferred in the section 361 exchange.

(B) *Gain recognition transaction*—(1) *General rule.* A transaction is described in this paragraph (c)(6)(iii)(B) if the transaction is entered into with a principal purpose of avoiding the U.S. tax that would have been imposed on the U.S. transferor on the disposition of the property transferred to the foreign acquiring corporation in the section 361 exchange. A disposition may have a principal purpose of tax avoidance even if the tax avoidance purpose is outweighed by other purposes when taken together.

(*2*) *Presumptive tax avoidance.* For purposes of this paragraph (c)(6)(iii)(B), the principal purpose of the foreign acquiring corporation's disposition of a significant amount of the section 367(a) property within two years of the section 361 exchange (whether in a recognition or nonrecognition transaction) shall be presumed to be the avoidance of the U.S. tax that would have been imposed on the U.S. transferor on the disposition of the property transferred to the foreign acquiring corporation in the section 361 exchange. However, this presumption shall not apply if it is demonstrated to the satisfaction of the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) that the avoidance of U.S. tax was not a principal purpose of the disposition.

(*3*) *Interest.* If additional tax is required to be paid as a result of a transaction described in paragraph (c)(6)(iii)(B) of this section, then interest must be paid on that amount at rates determined under section 6621 with respect to the period between the date prescribed for filing the U.S. transferor's income tax return for the year of the section 361 exchange and the date on which the additional tax for that year is paid.

* * * * *

(f) * * *

(3) *Reasonable cause exception for failure to comply*—(i) *Request for relief.* The provisions of paragraph (f)(1) of this section shall not apply if the U.S. transferor can demonstrate to the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the U.S. transferor's tax return for the taxable year, that a failure to comply was due to reasonable cause and not willful neglect. Whether the failure to comply was due to reasonable cause and not willful neglect will be determined by the Director after considering all the facts and circumstances. The Director shall notify the U.S. transferor in writing within 120 days if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. For this purpose, the 120-day period shall begin on the date the Internal Revenue Service notifies the U.S. transferor in writing that the request for relief has been received and assigned for review. Once such period commences, if the U.S. transferor is not again notified within 120 days, then the U.S. transferor shall be deemed to have established reasonable cause.

(ii) *Requirements for reasonable cause relief*—(A) *Time of submission.* Requests for reasonable cause relief will only be considered if, as soon as the U.S. transferor becomes aware of the failure to comply, the U.S. transferor attaches all the documents that should have been filed, as well as a complete written statement setting forth the reasons for the failure to timely comply, to an amended return that amends the return to which the documents should have been attached pursuant to the rules of section 6038B and the regulations under that section. The amended return and all required attachments must be filed with the applicable Internal Revenue Service Center with which the U.S. transferor filed its original return to which the documents should have been attached.

(B) *Notice requirement.* In addition to the requirement of paragraph (f)(3)(ii)(A) of this section, the U.S. transferor must comply with the requirements of paragraph (f)(3)(ii)(B)(*1*) or (*2*), as applicable.

(*1*) If the U.S. transferor is under examination for any taxable year when it requests relief, the U.S. transferor must provide a copy of the amended return and attachments to the Internal Revenue Service personnel conducting the examination.

(*2*) If the U.S. transferor is not under examination for any taxable year when it requests relief, the U.S. transferor must provide a copy of the amended return and attachments to the Director having jurisdiction over the U.S. transferor's return.

* * * * *

(g) *Effective/applicability dates.* (1) Except as provided in paragraphs (g)(2) through (5) of this section, this section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999 (which are not required to be reported under section 6038B), and except for transfers described in paragraph (e) of this section, which applies to transfers that are subject to §§ 1.367(e)–1(f) and 1.367(e)–2(e). * * *

(5) Paragraphs (c)(6) and (f)(3) of this section shall apply to transfers occurring on or after the date 30 days after the date these regulations are published as final regulations in the **Federal Register**. For guidance with respect to paragraphs (c)(6) and (f)(3) of this section before the date 30 days after the date these regulations are published as final regulations in the **Federal Register,** see 26 CFR part 1 revised as of

April 1 for the year before the date these regulations are published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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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 AUGUST 20, 2008

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Amendment of General Regulations for Federal Milk Marketing Agreements and Marketing Orders:

Addition of Supplemental Rules of Practice for Amendatory Formal Rulemaking Proceedings; published 8-20-08

Raisins Produced From Grapes Grown In California:

Revisions to Requirements Regarding Off-Grade Raisins; published 7-21-08

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Navy Department

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; published 8-20-08

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Approval and Promulgation of Air Quality Implementation Plans:

Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory; Pike County Area, PA; published 7-21-08

Exemption From the Requirement of a Tolerance:

Residues of Quaternary Ammonium Compounds, N-Alkyl (C_{12-18}) Dimethyl Benzyl Ammonium Chloride on Food Contact Surfaces; published 8-20-08

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Debt Collection; published 8-20-08

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Drawbridge Operation Regulations:

Intracoastal Waterway (ICW); Atlantic City, NJ, Air Show Event; published 3-31-08

Safety Zones:

Festival of Sail 2008 Ship's Parade; San Diego Harbor, San Diego, CA; published 6-27-08

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Federal Aviation Administration

Airworthiness Directives:

International Aero Engines AG (IAE) V2500 Series Turbofan Engines; published 7-16-08

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AGRICULTURE DEPARTMENT

Rural Housing Service

Housing Preservation Grants; comments due by 8-25-08; published 6-26-08 [FR E8-14456]

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National Oceanic and Atmospheric Administration

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries:

Inseason Actions (5 and 6); comments due by 8-26-08; published 8-11-08 [FR E8-18482]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery:

Biennial Specifications and Management Measures; Inseason Adjustments; comments due by 8-25-08; published 7-24-08 [FR E8-16986]

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ENVIRONMENTAL PROTECTION AGENCY

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Ohio; Removal of Vehicle Inspection and Maintenance Programs for Cincinnati and Dayton; comments due by 8-25-08; published 7-24-08 [FR E8-16987]

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Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Revisions to the California State Implementation Plan; comments due by 8-29-08; published 7-30-08 [FR E8-17455]

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Freeport, IL; comments due by 8-25-08; published 7-24-08 [FR E8-16847]

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Huntsville, AL; comments due by 8-25-08; published 7-24-08 [FR E8-16969]

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Rules of Procedure of the Government Accountability Office Contract Appeals Board; comments due by 8-25-08; published 6-26-08 [FR E8-14355]

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Proposed Flood Elevation Determinations; comments due by 8-25-08; published 5-27-08 [FR E8-11692]

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Pilatus Aircraft Ltd. Model PC-6 Series Airplanes; comments due by 8-29-08; published 7-30-08 [FR E8-17331]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4040/P.L. 110–314

Consumer Product Safety Improvement Act of 2008 (Aug. 14, 2008; 122 Stat. 3016)

H.R. 4137/P.L. 110–315

Higher Education Opportunity Act (Aug. 14, 2008; 122 Stat. 3078)

H.R. 6432/P.L. 110–316

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the animal drug user fee program, to establish a program of fees relating to generic new animal drugs, to make certain technical corrections to the Food and Drug Administration Amendments Act of 2007, and for other purposes. (Aug. 14, 2008; 122 Stat. 3509)

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