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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. AMS–FV–08–0048; FV08–948–2 FR]

Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reinstates the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2008–2009 and subsequent fiscal periods at $0.02 per hundredweight of potatoes handled. The Committee locally administers the marketing order regulating the handling of potatoes grown in northern Colorado. The continuing assessment rate was suspended for the 2006–2007 and subsequent fiscal periods to bring the monetary reserve within the program limit of two fiscal periods' operating expenses. Assessments upon potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* September 10, 2008.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *e-mail: Teresa.Hutchinson@usda.gov* or *GaryD.Olson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule reinstates § 948.215 of the order's rules and regulations and establishes a continuing assessment rate for the Committee for the 2008–2009 and subsequent fiscal periods at $0.02 per hundredweight of potatoes handled.

The Colorado potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes in Area No. 3. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006–2007 and subsequent fiscal periods, the Committee recommended, and USDA approved, a suspension of the continuing assessment rate that would remain suspended until reinstated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 8, 2008, and unanimously recommended 2008–2009 expenditures of $19,497 and an assessment rate of $0.02 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $18,697. For the 2006–2007 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $49,237. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $16,175. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate at $0.02 per hundredweight is needed.

The major expenditures recommended by the Committee for the

2008–2009 fiscal period include $7,800 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2007–2008 were also $7,800, $3,000, and $1,750, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area No. 3 potatoes. Colorado Area No. 3 potato shipments for the year are estimated at 787,600 hundredweight which should provide $15,752 in assessment income. Income derived from handler assessments, rent, and interest, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (estimated at $16,175 as of June 30, 2008) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 948.78).

The assessment rate reinstated in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2008–2009 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

Based on Committee data, there are 8 producers (7 of whom are also handlers) in the regulated area and 9 handlers (7 of whom are also producers) who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Based on Committee data, the production of Colorado Area No. 3 potatoes for the 2007–2008 fiscal period was 550,026 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for 2007 was $7.55 per hundredweight. The average annual producer revenue for the 8 Colorado Area No. 3 potato producers is therefore calculated to be approximately $519,000. Using Committee data regarding each individual handler's total shipments during the 2007–2008 fiscal period and a Committee estimated average f.o.b. price for 2007 of $9.75 per hundredweight ($7.55 per hundredweight plus estimated packing and handling costs of $2.20 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $6,500,000 worth of potatoes. Thus, the majority of handlers and producers of Colorado Area No. 3 potatoes may be classified as small entities.

This rule reinstates § 948.215 of the order's rules and regulations and establishes a continuing assessment rate for the Committee for the 2008–2009 and subsequent fiscal periods at $0.02 per hundredweight of potatoes handled. The reinstatement of the $0.02 assessment rate and the 2008–2009 expenditures of $19,497 were unanimously recommended by the Committee. The quantity of Colorado Area No. 3 potatoes for the 2008–2009 fiscal period is estimated at 787,600 hundredweight. Thus, the $0.02 rate should provide $15,752 in assessment income. Income derived from handler assessments, rent, and interest along with funds from the Committee's authorized reserves should be adequate to meet this fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2008–2009 fiscal period include $7,800 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2007–2008 were also $7,800, $3,000, and $1,750, respectively.

For the 2006–2007 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $49,237. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $16,175. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate is needed.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves. Higher assessment rates were also considered, but not recommended because they would add funds to the reserve.

To calculate the assessment rate, the Committee deducted estimated income received from rent and interest from the total recommended budget ($19,497 − $2,000 = $17,497). The assessment rate was then determined by dividing $17,497 by the quantity of assessable potatoes, which is estimated at 787,600 hundredweight for the 2008–2009 fiscal period. The result was rounded to $0.02 per hundredweight. This assessment rate will generate approximately $1,745 less than anticipated expenses when combined with interest and rent income, which the Committee has determined to be acceptable. Funds from the Committee's authorized reserve should be adequate to cover budgeted expenses not covered by income from assessments, interest, and rent.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2008–2009 fiscal period could range between $7.55 and $8.45 per hundredweight of Colorado summer potatoes. Therefore, the estimated assessment revenue for the 2008–2009 fiscal period as a percentage of total producer revenue could range between 0.24 and 0.26 percent.

This action reinstates the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of

the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 3 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2008 (73 FR 43375). Copies of the proposed rule were also mailed or sent via facsimile to all handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending August 11, 2008, was provided for interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2008–2009 fiscal period began on July 1, 2008, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the northern Colorado potato shipping season began in July; (3) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In Part 948, the suspension of § 948.215 is lifted.

Dated: September 4, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–20853 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 83, and 93

[Docket No. APHIS–2007–0038]

RIN 0579–AC74

Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are establishing regulations to restrict the interstate movement and importation into the United States of live fish that are susceptible to viral hemorrhagic septicemia, a highly contagious disease of certain fresh and saltwater fish. In 2005 and 2006, viral hemorrhagic septicemia was detected in freshwater fish in several of the Great Lakes and related tributaries. The disease has been responsible for several large-scale die-offs of wild fish in the Great Lakes region. This action is necessary to prevent further introductions into, and dissemination within, the United States of viral hemorrhagic septicemia.

DATES: *Effective date:* This interim rule is effective November 10, 2008.

Comment dates: Comments on the interim rule are due on or before November 10, 2008. Comments on the environmental assessment are due on or before October 9, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0038* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0038.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. P. Gary Egrie, Senior Staff Veterinary Medical Officer, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–0695; or Dr. Peter L. Merrill, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

Viral hemorrhagic septicemia (VHS) is a highly contagious disease of certain fresh and saltwater fish, caused by a rhabdovirus. It is listed as a notifiable disease by the World Organization for Animal Health (OIE). The pathogen produces variable clinical signs in fish including lethargy, skin darkening, exophthalmia, pale gills, a distended abdomen, and external and internal hemorrhaging. The development of the disease in infected fish can result in substantial mortality. Other infected fish may not show any clinical signs or die, but may be lifelong carriers and shed the virus.

Four genotypes of VHS virus have been identified, and appear to be distributed geographically. Genotypes I, II, and III are mainly found in Europe or Asia and are highly pathogenic to rainbow trout. The fourth genotype, referred to as North American type IV, has been found in wild fish from the East and West coasts of North America periodically since 1988. This genotype is less virulent to commercially important fish stocks than the European/Asian VHS virus genotypes because it results in less morbidity and mortality than those genotypes.

In 2005 and 2006, VHS outbreaks were reported in wild fish from the Great Lakes in both Canada and the United States. The mortality associated with numerous individual outbreaks ranged from just a few fish to many thousands per outbreak.

The 2005 and 2006 VHS outbreaks were the first freshwater isolations of VHS virus in the United States. The strain of VHS virus isolated from all of these outbreaks, while similar to North American type IV found in saltwater, has been shown to be genetically distinct from other known strains of VHS virus, and is apparently capable of causing substantial morbidity and mortality in many native species of fish. It is currently believed that the saltwater-adapted type IV strain mutated into a strain that is affecting new host fish species in new environments in both Canada and the United States. The extent of VHS viral distribution is not yet known; however, reported epizootics attributable to VHS since 2005 have been limited to wild fish from the Great Lakes watershed.

The emerging strain (tentatively called North American type IV(b) to differentiate it from what will likely be renamed type IV(a)) has caused a number of mass mortalities in wild fish populations, ranging up to many thousands of fish. Some outbreaks were reported to occur at temperatures that had not been previously associated with the development of VHS disease. Virus growth is generally inhibited when water temperatures are above 15 °C; however, this VHS virus appears to have a much wider temperature range. According to research conducted at the U.S. Geological Survey, type IV(b), in vitro, grows best at 15 °C and up to 20 °C where growth begins to decline. Type IV(b) viral growth was inhibited at 25 °C. Additionally, all the species of fish in the 2005 and 2006 North American outbreaks had not previously been known to be susceptible to VHS infection and/or disease. The list of fish species susceptible to VHS, as determined by the Animal and Plant Health Inspection Service (APHIS), currently includes 28 separate species. These species include baitfish, recreationally important fish, and food fish such as salmonids and catfish.

Federal Order

The Animal Health Protection Act (AHPA) authorizes the Secretary of Agriculture to prohibit or restrict the importation or movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock into or within the United States.

In response to recent outbreaks of VHS in wild fish populations in the Great Lakes, the Administrator determined that it was necessary, in order to prevent the spread of VHS into aquaculture facilities, to prohibit or restrict the interstate movement and importation of VHS-regulated species of live fish. Accordingly, on October 24, 2006, APHIS issued a Federal Order prohibiting the importation of VHS-susceptible species of live fish from two Canadian provinces (Ontario and Quebec) into the United States and the interstate movement of the same species of live fish from the eight States bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin).

At the time the Federal Order was issued, only three States (Michigan, New York, and Ohio) had been affected by VHS within the jurisdictional borders of their States. Epidemiologic considerations such as the commonality of the Great Lakes watershed influenced APHIS' decision to include all of the States within the Great Lakes watershed as ''affected'' or ''at-risk.''

In October 2006, APHIS held a 2-day meeting with Federal, State, Tribal, and industry representatives to discuss VHS and the Federal Order, and to obtain information regarding State regulations and diagnostic testing programs related to VHS. During this meeting, APHIS received several recommendations from participants regarding modifications to the Federal Order that could be made to alleviate impacts on industry and related businesses in the Great Lakes region while still protecting against the spread of VHS.

APHIS also met with the Department of Fisheries and Oceans Canada (DFO) and the Canadian Food Inspection Agency (CFIA) in November 2006. At that time, Canada provided APHIS with information about its VHS testing program and requested that APHIS amend the Federal Order to allow the importation of fish that Canada certifies as VHS-free.

Based on the information gathered at these meetings, on November 14, 2006, APHIS modified the Federal Order to allow VHS-susceptible species of live salmonid fish from the affected Canadian provinces to be imported into the United States if the shipment meets the regulations of the U.S. Fish and Wildlife Service (FWS) in 50 CFR 16.13(a)(3) and 16.13(b). The FWS regulations in 50 CFR 16.13(a)(3) provide that live or dead uneviscerated salmonid fish are prohibited entry into the United States for any purpose except by direct shipment accompanied by a certification that: (1) The fish lots from which the shipments originated have been sampled; (2) viral assays have been conducted on the samples according to methods specified in the regulations; and (3) certain pathogens, including the virus causing VHS, have not been detected in the fish stocks from which the samples were taken. The FWS regulations further provide that live salmonid fish can be imported into the United States only with the written approval of the Director of FWS. The regulations in 50 CFR 16.13(b) set out the information that must be included in the certification statement required in § 16.13(a)(3).

The modified Federal Order also established conditions under which VHS-susceptible species of live fish could be moved from the eight States bordering the Great Lakes. Specifically, the Order provided that VHS-susceptible live fish may be moved interstate for slaughter if the fish are: (1) Intended for human consumption; (2) transported to a State-inspected slaughter facility that discharges waste water into a municipal sewage system that includes waste water disinfection, or disposes of waste water in a non-discharging settling pond or a settling pond that disinfects according to State

and Federal requirements, and renders or composts offal, including carcasses; and (3) accompanied by a valid VS Form 1–27 issued by an APHIS area office if not tested for VHS.

The Order also provided that VHS-susceptible fish may be moved interstate to research and diagnostic laboratories provided the fish are: (1) Accompanied by a valid VS Form 1–27 issued by an APHIS area office stating that the fish are destined for a research or diagnostic laboratory that has been approved by a State, Tribal, or Federal competent authority for aquatic animal health and (2) received at a laboratory where waste fluids and carcasses are considered medical waste and disposed of according to State and Federal requirements. Finally, the Order provided that VHS-susceptible fish may be moved interstate for purposes other than slaughter, research, or diagnostics provided the fish are transported with documentation from the appropriate State, Tribal, or Federal competent authority for aquatic animal health stating that the fish have tested negative for VHS virus under specific national and international standards.

In January 2007, APHIS hosted public meetings in Lakewood, CO; Memphis, TN; Romulus, MI; and Coraopolis, PA. The purpose of the meetings was to present current information about the outbreaks of VHS and actions taken to prevent its spread, and to give interested stakeholders an opportunity to present data and views concerning the possible regulation of VHS by the Agency.

On May 4, 2007, APHIS modified the Federal Order to allow for the catch-and-release of VHS-susceptible regulated fish in waters that cross State and international boundaries. These activities include recreational fishing, tournaments, competitions, fishing derbies, or other types of contests where individuals catch, compare, and release live VHS-susceptible fish. However, catch-and-release fishing activities do not include the movement of VHS-susceptible fish intended to be used as live bait. Catch and release fishing activities are considered low risk for spreading VHS virus because fish are caught and released within the same body of water and within a limited geographic area over a limited time period. In contrast, the use of live bait is considered high risk for spreading VHS virus because the bait is used for fishing in multiple bodies of water over a broader geographic area.

On November 8, 2007, APHIS modified the Federal Order by revising the list of VHS-susceptible species. We removed 12 species and added 2 new freshwater fish species that are susceptible to VHS. We also clarified the scientific names of several species. Currently, there are 28 separate species of fish listed.

The original October 2006 Federal Order listed 37 species of VHS-susceptible fish, including all species listed by the OIE as susceptible to all known strains of VHS. The updated list includes only those species found in freshwater environments in the United States and Canada that have been infected by VHS under natural (i.e., nonexperimental) conditions of exposure and from which VHS virus has been isolated by cell culture, with confirmation of strain identity through molecular detection. Anadromous fish species [1] that have migrated into freshwater and from which VHS strain type IV(a) is isolated are excluded.

Finally, on April 2, 2008, APHIS modified the Federal Order to allow VHS-susceptible species of live non-salmonid fish from affected Canadian provinces to be imported into the United States for direct slaughter if accompanied by an APHIS permit.

The Federal Order was issued in response to the rapid spread of VHS in the Great Lakes region and was designed to prevent the introduction of VHS into aquaculture facilities by controlling the movement of VHS-susceptible fish species while APHIS gathered more information about the disease and developed a regulatory program that would allow the interstate movement and importation of VHS-susceptible fish under certain conditions. Taking into consideration the information provided by States, Tribes, and other interested stakeholders, APHIS has now developed a regulatory framework for the interstate movement and importation of VHS-susceptible fish species.

In the Federal Order, we used the terms ''VHS-susceptible species'' and ''VHS-affected or at-risk States or regions;'' however, for the purposes of these regulations we will use the terms ''VHS-regulated species'' and ''VHS-regulated areas or regions.''

Accordingly, we are amending the interstate movement regulations in title 9, subchapter C, by adding a new part 83, ''Viral Hemorrhagic Septicemia'' (§§ 83.1 through 83.7). We are also amending 9 CFR part 71 to provide that fish affected with VHS may be moved interstate in accordance with part 83. Finally, we are amending the animal import regulations in 9 CFR part 93, subpart I, ''Aquatic Animal Species'' (§§ 93.900 through 93.916). The new interstate movement and importation requirements are discussed in detail below.

As stated previously in this document, the AHPA authorizes the Secretary of Agriculture to prohibit or restrict the importation or movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock into or within the United States. Ballast water (i.e., water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship) can be taken onto a ship in its port of origin and discharged into the water body of the ship's destination port, making it a potential pathway for VHS virus. APHIS has neither the regulatory authority nor the technical expertise to safely regulate ballast water discharge. Therefore, we do not address ballast water in this interim rule. APHIS will assist the U.S. Coast Guard, which has clear regulatory authority for ballast water, in their development of ballast water discharge standards.

Definitions (§§ 83.1 and 93.900)

In §§ 83.1 and 93.900, we define the terms used in the regulations. In § 83.1, we set out the following standard terms and definitions, which are found throughout title 9, subchapter C: *Accredited veterinarian*, *Administrator*, *Animal and Plant Health Inspection Service (APHIS)*, *APHIS representative*, *Department*, *interstate*, *moved (movement)*, *person*, *State,* and *State animal health official*. These terms and their definitions are set out in the regulatory text at the end of this document.

In both §§ 83.1 and 93.900, we define terms that are specific to VHS and aquatic animals. These terms are *anadromous fish, catch-and-release fishing, cultured fish, secure water source, VHS virus,* and *viral hemorrhagic septicemia (VHS)*. These terms are defined as follows:

Anadromous fish. Fish that are born and spawn in freshwater, but which spend part of their lifecycle in saltwater.

Catch-and-release fishing. Fishing for pleasure or for recreational purposes, including tournaments, organized fishing competitions, fishing derbies, or other types of contests where individuals catch, compare, and release live VHS-regulated fish. This term excludes VHS-regulated fish used, or intended to be used, as live bait.

Cultured fish. Fish of the same species and age class, originating from the same

[1] We define *anadromous fish* as fish that are born and spawn in freshwater, but which spend part of their lifecycle in saltwater.

broodstock and on the same water supply, whose care is partly or totally managed from the first life stage onwards.

Secure water source. A biosecure water supply that does not contain pathogens or has not had the opportunity to be contaminated with pathogens. Biosecure water supplies include well, spring, or borehole water; surface water that does not contain fish populations; or water that has been treated to eliminate aquatic animal pathogens.

VHS virus. Any North American (type IV) strain of VHS virus, a rhabdovirus of fish.

Viral hemorrhagic septicemia (VHS). A disease caused by infection with VHS virus.

Due to slight differences in terminology and program requirements, some VHS-specific terms are defined differently in §§ 83.1 and 93.900. These terms are *approved laboratory, competent authority, VHS-regulated area, VHS-regulated region,* and *VHS-regulated fish*.

In § 83.1, *approved laboratory* is defined as a laboratory authorized by a State, Tribal, or Federal competent authority for aquatic animal health to perform assays for the detection of VHS virus while, in § 93.900, *approved laboratory* is defined as a laboratory authorized by the competent authority of a country for aquatic animal health to perform assays for the detection of VHS virus.

In § 83.1, we define *competent authority* as the State, Tribal, or Federal entity with the legal responsibility for ensuring or supervising the implementation of aquatic animal health measures. This definition is similar to the current definition for *competent authority* in § 93.900, which refers to the national veterinary services or other authority of a country responsible for aquatic animal health.

In § 83.1, *VHS-regulated area* is defined as any State or portion of a State listed in accordance with § 83.4. Section 93.900 defines *VHS-regulated region* as any region listed in accordance with § 93.910.

In § 83.1, we define *VHS-regulated fish* as any fish species listed in accordance with § 83.4 while, in § 93.900, we define *VHS-regulated fish* as any fish species listed in accordance with § 93.910.

Finally, in § 83.1, we define the term *Interstate Certificate of Inspection (ICI).* This term is specific to the interstate movement requirements in part 83 and is defined as an official document issued by an accredited veterinarian or a State, Tribal, or Federal competent authority in the originating State that certifies that the fish being moved interstate originated from a facility that has been found free of VHS virus.

Interstate Movement

General Restrictions; Conditions of Movement (§§ 83.2 and 83.3)

Section 83.2 provides that live VHS-regulated fish may not be moved interstate from a VHS-regulated area except in compliance with part 83. Section 83.3 sets forth the conditions under which live VHS-regulated fish may be moved interstate.

Paragraph (a) of § 83.3 provides that, apart from the exceptions provided in paragraphs (b) through (e) of that section, live VHS-regulated fish, including fish moved to live fish markets, may only be moved interstate from a VHS-regulated area if the fish originated from a facility that has been found free of the VHS virus in accordance with § 83.6 and the fish are accompanied by an Interstate Certificate of Inspection (ICI) issued by an accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health.

Paragraph (b) of § 83.3 provides that live VHS-regulated fish may be moved interstate directly to a slaughtering establishment provided the fish are transported in a sealed conveyance and accompanied by a VS Form 1–27. The VS Form 1–27 is available through APHIS' Veterinary Services offices, and can be issued by a State, Tribal, Federal, or accredited veterinarian. The fish must be moved to a slaughtering establishment that discharges its waste water to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus, or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus. In addition, any water used to transport the fish must be disposed of to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus, or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus. These requirements are necessary to ensure that water waste discharged to the environment (or to a public waterway) does not contain any viable VHS virus. Offal, including carcasses, from the slaughtering establishment must be either rendered or composted.

Paragraph (c) of this section extends these same provisions to fish moved for research or diagnostic purposes. Paragraph (d) specifies that live VHS-regulated fish may be moved interstate during catch-and-release fishing.

Finally, paragraph (e) provides that the Administrator may, on a case-by-case basis, permit the interstate movement of fish whose movement is not otherwise provided for in part 83, under such conditions as the Administrator may prescribe in each case to prevent the introduction and dissemination of VHS.

VHS-Regulated Fish and VHS-Regulated Areas (§ 83.4)

Paragraph (a) of § 83.4 provides that APHIS will list as a VHS-regulated fish any fish species found in freshwater to be susceptible to the North American (type IV) strain of VHS virus under natural (i.e., non-controlled) conditions of exposure and from which VHS virus has been isolated in cell culture or other assay determined by the Administrator to be adequate to detect VHS virus, with confirmation of strain identity through genetic sequencing. Anadromous fish that have migrated into freshwater and from which VHS strain type IV(a) has been isolated will not be considered VHS-regulated fish under this rule because this strain appears to be less pathogenic than type IV(b). Type IV(a) has been in the United States since at least 1988 and has not resulted in large-scale fish mortalities across a broad range of species such as those that were associated with the outbreaks of type IV(b) in the Great Lakes.

Paragraph (a) further provides that, when APHIS determines that a species meets the criteria of this paragraph and should be added to the list of VHS-regulated fish, APHIS will publish a notice in the **Federal Register** announcing that determination.

Paragraph (b) of this section provides that APHIS will list as a VHS-regulated area each State or portion of a State from which VHS virus has been detected in any VHS-regulated fish species (with or without clinical signs of disease) in a water source that is not a secure water source, or which the Administrator determines to be at risk of having VHS based on criteria such as inadequate surveillance or movement requirements, or other epidemiologic information.

Paragraph (b) further provides that, if the Administrator determines that a State or portion of a State meets the criteria for a VHS-regulated area, APHIS will publish a notice of its decision in the **Federal Register** and take comments from the public. The designation as a VHS-regulated area will become

effective upon publication of this notice. After reviewing the comments, APHIS will issue a second notice in the **Federal Register** announcing its decision on whether or not the designation as a VHS-regulated area will remain in effect.

Paragraph (c) provides that these lists of VHS-regulated fish and VHS-regulated areas will be maintained on the APHIS aquaculture Web site at *http://www.aphis.usda.gov/animal_health/animal_dis_spec/aquaculture*. The purpose of maintaining the lists on the Web site is to maintain the most accurate, up-to-date list possible in a location where affected parties can easily view recent changes. The Web site list should be particularly useful when a new area is added to the list, which occurs immediately after APHIS receives and confirms reports of a new outbreak. Changes to lists maintained in the regulations typically take several weeks, so maintaining the lists on the Web site will allow APHIS to communicate new developments and take prompt action as soon as it confirms an outbreak or identifies a new species of fish affected by VHS.

Paragraph (c) also includes an address from which the lists of VHS-regulated fish and VHS-regulated areas may be obtained from APHIS.

As of this rule's effective date, the following fish species and areas are regulated because of VHS:

VHS-Regulated Areas

Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin.

VHS-REGULATED FISH SPECIES

Black crappie	*Pomoxis nigromaculatus.*
Bluegill	*Lepomis macrochirus.*
Bluntnose minnow.	*Pimephales notatus.*
Brown bullhead	*Ameiurus nebulosus.*
Brown trout	*Salmo trutta.*
Burbot	*Lota lota.*
Channel catfish	*Ictalurus punctatus.*
Chinook salmon	*Oncorhynchus tshawytscha.*
Emerald shiner	*Notropis atherinoides.*
Freshwater drum	*Aplodinotus grunniens.*
Gizzard shad	*Dorosoma cepedianum.*
Lake whitefish	*Coregonus clupeaformis.*
Largemouth bass	*Micropterus salmoides.*
Muskellunge	*Esox masquinongy.*
Northern pike	*Esox lucius.*
Pumpkinseed	*Lepomis gibbosus.*
Rainbow trout	*Oncorhynchus mykiss.*
Rock bass	*Ambloplites rupestris.*
Round goby	*Neogobius melanostomus.*
Shorthead redhorse.	*Moxostoma macrolepidotum.*
Silver redhorse	*Moxostoma anisurum.*

VHS-REGULATED FISH SPECIES—Continued

Smallmouth bass	*Micropterus dolomieu.*
Spottail shiner	*Notropis hudsonius.*
Trout-Perch	*Percopsis omiscomaycus.*
Walleye	*Sander vitreus.*
White bass	*Morone chrysops.*
White perch	*Morone americana.*
Yellow perch	*Perca flavescens.*

This interim rule does not provide a process by which APHIS will remove areas from the list of VHS-regulated areas if the area petitions APHIS for a reassessment of its disease status. As discussed in more detail below under the heading ''Related Issues on Which APHIS is Seeking Comment,'' we particularly invite comments on which specific factors APHIS should consider before removing an area from the list of VHS-regulated areas.

Interstate Certificate of Inspection (ICI) (§ 83.5)

Paragraph (a) of § 83.5 requires that live VHS-regulated fish moved interstate in accordance with § 83.3(a) be accompanied by an ICI issued by an accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health. This paragraph further provides that an ICI will be valid for 30 days from the date of issuance.

Paragraph (b) of this section requires that the ICI state that: (1) The live fish were inspected by the accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health within 72 hours prior to shipment and found to be free of any clinical signs of disease consistent with VHS, and (2) the live fish covered by the ICI originated in an area or facility that has demonstrated freedom from VHS in accordance with § 83.6.

In addition, the section specifies that the ICI must contain the following information:

- The name, address, and phone number of the owner or owner's agent.
- The name, address, and phone number of the facility in which the fish originated.
- The name, address, and phone number of the person or facility who will receive the fish; or the State or other regulatory authority responsible for oversight of the environment in which the fish will be introduced.
- The name, address, and phone number of the shipping or transportation company.
- The species and number of the fish.
- The lot (or other) identification of the shipment.
- The name, address, and phone number of the approved laboratory that performed the testing required by § 83.6 and the number of fish tested, the assay(s) used for testing, and the test results.
- The date the certificate was issued.
- The type of water source according to § 83.6(c).

Requiring the issuance of an ICI will ensure that appropriate testing procedures were applied as well as allow for traceback should an inspector encounter a problem with or have questions about a shipment.

Testing Requirements (§ 83.6)

Paragraph (a) of § 83.6 provides that a facility can demonstrate freedom from VHS through negative testing results provided by an approved laboratory. Paragraph (a) also specifies that such testing must:

- Be conducted with a testing sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the facility.
- Include virus isolation or other assay authorized by the Administrator, using appropriate cell lines to detect VHS virus, if present. All suspect VHS cytopathic effects must be positively identified as VHS through molecular assays and/or genetic sequencing.
- Use proportional numbers of each VHS-regulated fish species which might be present in the facility.
- Be conducted at water temperatures between 50 and 72 °F, or at other times or under environmental conditions when VHS is most likely to be detected, if present.

Facilities with a history of negative testing results for VHS are assumed to have a lower risk of spreading VHS; therefore, we will decrease the number of fish required to be tested for such facilities. Specifically, paragraph (a)(1) of § 83.6 also provides that facilities with cultured fish of VHS-regulated species which can document a 2-year history of negative testing for VHS virus can conduct testing at a sampling level to provide for a 95 percent confidence level of detecting a 5 percent prevalence of infection in the facility. Facilities with cultured fish of VHS-regulated species which can document a 4-year history of negative testing for VHS virus can conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 10 percent prevalence of infection in the fish facility. Such facilities must be on a secure water source, and testing must be conducted twice a year, with at least 3 months between tests. These facilities must also document that any VHS-regulated species in the facility that originated in VHS-regulated States or Canadian

provinces originate from facilities of the same or higher health status.

Because this is an emerging disease, APHIS may update the list of VHS-regulated fish species as our knowledge of species susceptibility increases. Paragraph (b) explains how facilities can maintain VHS-free status when new species are added to the list of VHS-regulated fish species. Specifically, paragraph (b) provides that, when a new species is added to the list of VHS-regulated fish, a facility that has been determined to be free of VHS must conduct additional testing on the newly listed species, if present in the facility, and the fish must be free of VHS virus in order for the facility to retain its free status. Paragraph (b) further provides that VHS testing must be conducted on each newly listed species with a sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the fish facility in order to return the facility to the same health status that existed prior to the new listing of the VHS-regulated species.

Paragraph (c) of this section specifies that the test results for fish maintained on a secure water source will be valid for 6 months from the date of sample collection provided no fish of a lesser or unknown health status are introduced into the facility. Test results for fish held on a water source that is not a secure water source will be valid for 30 days from the date of sample collection. This will help to ensure that fish qualified to move interstate by virtue of a health certification program retain that qualification for a reasonable length of time while not compromising the health status of those fish through the introduction of additional fish of unknown or lesser VHS status, or introduction of VHS virus through the water source.

Shipping Containers; Cleaning and Disinfection (§ 83.7)

Paragraph (a) of § 83.7 requires that all live VHS-regulated fish that are to be moved interstate in accordance with § 83.3(a) must be moved in new containers or containers that have been cleaned and disinfected to neutralize any VHS virus to which the shipping containers may have been exposed. Cleaning and disinfection must be monitored by the accredited veterinarian or State, Tribal, or Federal competent authority for aquatic animal health who issues the ICI. The cleaning and disinfection protocols used must be referenced in the ICI or in a separate cleaning and disinfection certificate accompanying the shipment.

Import Restrictions

General Restrictions; Exceptions (§ 93.910)

As previously discussed, the Federal Order, as amended, allows VHS-susceptible species of live salmonid fish from the affected Canadian provinces to be imported into the United States if the shipment meets the FWS regulations in 50 CFR 16.13(a)(3) and 16.13(b). This interim rule will continue to allow live salmonid VHS-regulated fish to be imported into the United States from VHS-regulated regions in accordance with the FWS regulations. In addition, this rule establishes conditions under which live non-salmonid VHS-regulated fish species may be imported into the United States from VHS-regulated regions.

Specifically, paragraph (a) of § 93.910 provides that no live VHS-regulated species of fish may be imported into the United States from VHS-regulated regions except in accordance with subpart I or the regulations of the FWS in 50 CFR 16.13(a)(3) and 16.13(b). This paragraph further provides that no such live VHS-regulated fish may be moved from the port of entry after arrival until released by an APHIS representative or FWS official. In addition, this paragraph specifies that the Administrator may, upon request in specific cases, allow the importation of live VHS-regulated fish into the United States under conditions other than those specifically set forth in the subpart when the Administrator determines that such movement will not result in the further introduction of VHS into the United States.

Paragraph (b) of § 93.910 provides that APHIS will list as a VHS-regulated fish any fish species found in freshwater to be susceptible to the North American (type IV) strain of VHS virus under natural (i.e., non-controlled) conditions of exposure and from which VHS virus has been isolated in cell culture or other assay determined by the competent authority to be adequate to detect VHS virus, with confirmation of strain identity through genetic sequencing. As stated previously, anadromous fish that have migrated into freshwater and from which VHS strain type IV(a) has been isolated are not considered VHS-regulated fish under this rule. Paragraph (b) further provides that, when APHIS determines that a species meets the criteria of this paragraph and should be added to the list of VHS-regulated fish, APHIS will publish a notice in the **Federal Register** announcing that determination.

Paragraph (c) of this section provides that APHIS will list as a VHS-regulated region any region in which VHS virus has been officially reported to the OIE by the country's competent authority for aquatic animal health from any fish species in a water source that is not a secure water source, or which the Administrator determines to be at risk of having VHS based on criteria such as inadequate surveillance, less restrictive import requirements, or other epidemiologic information.

Paragraph (c) further provides that, if the Administrator determines that a region meets the criteria for a VHS-regulated region, APHIS will publish a notice of its decision in the **Federal Register** and take comments from the public. The designation as a VHS-regulated region will become effective upon publication of this notice. After reviewing the comments, APHIS will issue a second notice in the **Federal Register** announcing its decision on whether or not the designation as a VHS-regulated region will remain in effect.

Paragraph (d) provides that these lists will be maintained on the APHIS aquaculture Web site at *http://www.aphis.usda.gov/animal_health/animal_dis_spec/aquaculture*. This paragraph further provides an address from which the lists of VHS-regulated fish and VHS-regulated regions may be obtained from APHIS.

As of this rule's effective date, only two Canadian Provinces (Ontario and Quebec) are listed as VHS-regulated regions. The current list of VHS-regulated fish species is set out above under the heading ''VHS-regulated fish and VHS-regulated areas (§ 83.4).''

This interim rule does not provide a process by which APHIS will remove regions from the list of VHS-regulated regions if the area petitions APHIS for a reassessment of its disease status. As discussed in more detail below under the heading ''Related Issues on Which APHIS Is Seeking Comment,'' we particularly invite comments on which specific factors APHIS should consider before removing an area from the list of VHS-regulated regions.

Paragraph (e) of § 93.910 provides that other provisions of part 93 relating to the importation of live VHS-regulated fish shall not apply to shipments of such fish imported from VHS-regulated regions if they are imported in accordance with the FWS regulations in 50 CFR 16.13. As previously discussed, the FWS regulations pertain to live salmonid fish species to be imported into the United States. This paragraph makes it clear that live salmonid VHS-regulated fish to be imported into the United States from VHS-regulated regions will be exempt from the other provisions in part 93 provided that the

fish are imported in accordance with the FWS regulations.

Paragraph (f) of this section provides that other provisions of part 93 relating to the importation of live VHS-regulated fish shall not apply to shipments of such fish in transit through the United States, if an import permit has been obtained under § 93.912 and all conditions of the permit are observed, and if the live VHS-regulated fish species are handled as follows:

- They are maintained under continuous confinement while in transit through the United States aboard an aircraft, ocean vessel, or other means of conveyance; or if they are unloaded in the course of such transit, they are placed in a holding facility that is provided by the carrier or its agent and has been approved by the Administrator as adequate to prevent the spread within the United States of any finfish pathogen; they are maintained there under continuous confinement until loaded aboard a means of conveyance for transportation from the United States; and they are maintained under continuous confinement aboard such means of conveyance until it leaves the United States.
- They are moved in accordance with any additional conditions prescribed in the permit that the Administrator has determined to be necessary to ensure that the fish do not introduce VHS into the United States.

For a holding facility to be approved by the Administrator, the following conditions must be met:

- The holding facility must be sufficiently isolated to prevent direct or indirect contact of the live fish it contains with any other live VHS-regulated fish species in the United States.
- The holding facility must be constructed to provide adequate protection against environmental conditions and so that it can be adequately cleaned, washed, and disinfected.
- Provision must be made for disposal of fish carcasses, shipping water, effluent, waste, and any associated shipping materials in a manner that will prevent dissemination of disease.
- Provision must be made for adequate sources of feed and water and for attendants for the care and feeding of fish in the facility.
- The holding facility must comply with all applicable local, State, and Federal requirements for environmental quality.
- The holding facility must comply with any additional requirements that the Administrator may impose on a particular shipment in order to prevent the dissemination of VHS virus.

Paragraph (g) provides that the provisions of the subpart relating to the importation of live VHS-regulated fish shall not apply to fish moved into the United States from VHS-regulated regions during catch-and-release fishing.

Ports Designated for the Importation of Live VHS-Regulated Fish Species (§ 93.911)

Section 93.911 designates ports through which live VHS-regulated fish from VHS-regulated regions may be imported into the United States without an import permit. To relieve some of the paperwork burden associated with import permits, we will allow VHS-regulated fish species that have been tested in accordance with § 93.913(b) and found to be free of VHS virus to be imported through certain Canadian border ports without an import permit. We consider those ports to have adequate facilities and inspectors to perform the necessary inspections of shipments of live fish without advance notification of the arrival of a shipment that is associated with the application for and issuance of an import permit. As described later in this document in the section titled ''Declaration and other documents (§ 93.914),'' all importers must submit a declaration to Customs. The information included in the declaration will parallel the information required in an import permit, except that importers must indicate the route of travel in an import permit. APHIS asks for notice of a shipment's route of travel in order to prevent transits of animals through countries subject to import restrictions because of certain animal disease risks. We typically do not require this information for shipments coming through land border ports because it is unlikely that a shipment entering the United States at a land border port would have traveled through any other countries.

Paragraph (a) provides that VHS-regulated fish species may be imported into the following Canadian border ports without an import permit: Eastport, ID; Houlton and Jackman, ME; Detroit, Port Huron, and Sault Ste. Marie, MI; Baudette, MN; Opheim, Raymond, and Sweetgrass, MT; Alexandria Bay, Buffalo, and Champlain, NY; Dunseith, Pembina, and Portal, ND; Derby Line and Highgate Springs, VT; and Oroville and Sumas, WA.

Paragraph (b) provides that live VHS-regulated fish may be imported into the United States with an import permit through the following ports: Anchorage, AK; Los Angeles and San Francisco, CA; Miami and Tampa, FL; Atlanta, GA; Honolulu, HI; Chicago, IL; Boston, MA; Newark, NJ; Jamaica and Newburgh, NY; Portland, OR; Memphis, TN, Dallas-Ft. Worth, TX; Seattle, WA; and San Juan, PR.

Paragraph (c) of this section also provides for other ports to be designated by the Administrator in specific cases with the concurrence of the Secretary of the Department of Homeland Security.

Import Permits (§ 93.912)

Paragraph (a) of § 93.912 requires that live VHS-regulated fish imported from VHS-regulated regions through a limited port listed in § 93.911(b) be accompanied by an import permit issued by APHIS and must be imported within 30 days of the proposed arrival date stated in the import permit.

Paragraph (b) provides the address and APHIS Web site from which prospective importers may request import permit applications and to which completed applications should be sent. An application for an import permit must be submitted for each shipment of live VHS-regulated fish.

Paragraph (c) of this section specifies the information that must be included on an import permit application. It states that the application must include the name and address of the exporter; the proposed date of shipment to the United States; the name and address of the importer; the species and number of live VHS-regulated fish to be imported into the United States; the purpose of the importation; the port of embarkation; the mode of transportation; the route of travel, including all carrier stops en route; the port of entry in the United States; the proposed date of arrival in the United States; and the name and address of the person to whom the live VHS-regulated fish will be delivered in the United States.

APHIS needs this information to determine whether the live fish are eligible for importation, to respond to an applicant, to identify the shipment at the port of entry, to ensure that inspectors and facilities are available for inspection in the United States, and to contact appropriate persons if any questions arise concerning the importation.

Finally, paragraph (d) explains what happens after we receive and review the permit application. This paragraph provides that, if following our review, we determine that the live VHS-regulated fish are eligible for importation, we will issue an import permit. This paragraph also specifies that an import permit does not guarantee that any live fish will be

allowed entry into the United States; the VHS-regulated fish will be allowed to enter the United States only if they meet all applicable requirements of the regulations.

Health Certificate (§ 93.913)

Paragraph (a) of § 93.913 requires that all live VHS-regulated fish that are imported from VHS-regulated regions for other than immediate slaughter or research or laboratory use be accompanied by a health certificate. The health certificate must be in English or contain an English translation and must be issued by a full-time salaried veterinarian of the national government of the exporting country, or issued by a certifying official and endorsed by the competent authority of that country. The health certificate will be valid for 30 days from the date of issuance.

In addition, the health certificate must state that the shipment was inspected by the veterinarian or certifying official who issued the certificate within 72 hours prior to shipment, and found to be free of any clinical signs of disease consistent with VHS; and the live fish covered by the health certificate originated in a region or facility that has demonstrated freedom from VHS through testing in accordance with paragraphs (b) and (c) of § 93.913.

Paragraph (b) provides that a facility can demonstrate freedom from VHS through negative testing results by a pathogen detection laboratory approved for VHS viral assays by the competent authority. All viral testing must meet the following conditions:

- Be conducted with a testing sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the facility.
- Include virus isolation or other assays authorized by the competent authority, using appropriate cell lines to detect VHS virus, if present. All suspect VHS cytopathic effects must be positively identified as VHS through molecular assays and/or genetic sequencing.
- Test proportional numbers of each VHS-regulated fish species which might be present in a shipment, if applicable.
- Be conducted at water temperatures between 50 and 72 °F, or at other times or under environmental conditions when VHS virus is most likely to be detected, if present.

As stated previously in this document, facilities with a history of negative testing results for VHS are assumed to have a lower risk of spreading VHS; therefore, we will decrease the number of fish that are required to be tested for such facilities. Specifically, paragraph (b) of this section also allows facilities with cultured fish of VHS-regulated species which can document a 2-year negative testing history for VHS virus to conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 5 percent prevalence of infection in the facility and facilities with cultured fish of VHS-regulated species which can document a 4-year negative testing history for VHS virus to conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 10 percent prevalence of infection in the fish facility. Such facilities must be on a secure water source, and testing must be conducted twice a year, with at least 3 months between tests. The facilities must also document that any VHS-regulated species in the facility that originated in VHS-regulated States or Canadian provinces originate from facilities of the same or higher health status.

Paragraph (c) explains how facilities can maintain VHS-free status when new species are added to the list of VHS-regulated fish species. Specifically, paragraph (c) provides that when a new species is added to the list of VHS-regulated fish, a facility that has been determined to be free of VHS must conduct additional testing on fish of the newly listed species, if present in the facility, and the fish must be free of VHS virus in order for the facility to retain its free status. Paragraph (c) further provides that VHS testing must be conducted on each newly listed species with a sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the fish facility.

Paragraph (d) of this section requires that, except as provided in § 93.910(e) through (g), all live fish be shipped in new containers or containers that have been cleaned and disinfected to neutralize any VHS virus to which the shipping containers may have been exposed. Cleaning and disinfection of shipping containers must take place under the supervision of the veterinarian or certifying official who issues the health certificate, and be sufficient to neutralize any VHS virus to which shipping containers may have been exposed. Cleaning and disinfection protocols must be referenced in the health certificate or in a separate cleaning and disinfection certificate accompanying the shipment to the U.S. port of entry.

Declaration and Other Documents (§ 93.914)

Section § 93.914 requires the importer or his or her agent to submit the following documents to the appropriate Customs and Border Protection officer for use by the port veterinarians:

- All permits, certificates, or other documentation required under §§§ 93.912 and 93.913; and
- Two copies of a declaration that lists the port of entry; the name and address of the importer; the name and address of the broker; the origin of the live fish; the number, species, and the purpose of the importation; the name of the person to whom the fish will be delivered; and the location of the place to which such delivery will be made. This information will allow for the traceback of shipments should any problems occur subsequent to entry into the United States.

Inspection at the Port of Entry (§ 93.915)

Section 93.915 sets forth requirements for port of entry inspections of shipments of live fish. Paragraph (a) provides that the shipments of live VHS-regulated fish must be presented for inspection at a port of entry designated under § 93.911. This paragraph also provides that the port veterinarian must be notified at least 72 hours in advance of the arrival of the shipment in the United States for live fish of VHS-regulated species being imported through a limited port listed in § 93.911(c). It also provides that any shipment that does not meet the requirements of this subpart will be refused entry (e.g., lacking appropriate permits, declarations, and/or health certificates or exhibiting clinical signs consistent with VHS).

Paragraph (b) states that shipments refused entry must be exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, or the shipment will be disposed of as the Administrator may direct.

Special Provisions (§ 93.916)

Section 93.916 sets forth requirements for importation for slaughter or for research or laboratory purposes.

Paragraph (a) provides that live VHS-regulated fish from VHS-regulated regions may be imported directly for slaughter under the following conditions:

- An import permit has been obtained under § 93.912 and all conditions of the permit are observed.
- An APHIS representative at the port seals the means of conveyance with official seals.
- The shipment is moved directly from the port of entry to a slaughtering establishment that discharges its waste water to a municipal sewage system that includes waste water disinfection

sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus. Offal, including carcasses, from the slaughtering establishment is either rendered or composted.

- An APHIS representative unseals the vehicle upon arrival at the slaughtering establishment.
- Any water used to transport the fish is disposed to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

Paragraph (b) of this section provides that live non-salmonid VHS-regulated fish may be imported from a VHS-regulated region for research or laboratory use under the following conditions:

- An import permit has been obtained under § 93.912 and all conditions of the permit are observed.
- The laboratory or research facility disposes of effluent to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.
- Carcasses must be rendered or composted.
- Any water used to transport the fish is disposed to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

These measures will ensure that VHS virus that may be present in such fish is effectively neutralized or that the fish are rendered incapable of infecting fish in other waters of the United States.

Related Issues on Which APHIS Is Seeking Comment

There are two additional issues related to VHS for which we are seeking public comment. This interim rule does not make any of the possible changes discussed below, because there are no immediate risks associated with them that would justify immediate action. However, we believe the following changes would improve the effectiveness of our programs to prevent the introduction of VHS and other fish pathogens and may include such changes in a subsequent rulemaking.

As discussed above, the new lists of VHS-regulated areas and VHS-regulated regions will be maintained on the APHIS Web site, not in the regulations. We do not however, provide criteria for removing an area or region from those lists. At present, VHS occurs only in wild fish populations in the United States and Canada, making the disease difficult to contain and eradicate. For that reason, we do not believe any areas or regions that are currently on the lists of VHS-regulated areas or VHS-regulated regions will be eligible for removal from those lists in the immediate future. Further, APHIS is still considering what information we would use in reassessing an area's or region's disease status and would find public input valuable. Specifically, APHIS seeks comments on what factors should be considered when removing areas and regions from the lists of VHS-regulated areas and VHS-regulated regions.

We recognize that gametes are a potential pathway for the spread of VHS due to the ability of the virus to survive in ovarian fluid. While the disinfection of salmonid eggs is common practice, no standardized protocols exist for disinfecting non-salmonid eggs. Further, there is not sufficient documented scientific evidence to support regulated egg treatment protocols for non-salmonid eggs. APHIS seeks comment on what types of egg disinfection protocols, if any, should be considered for VHS-regulated non-salmonid species.

User Fees

APHIS user fees for processing permit applications and for inspecting animals at the port of entry will apply. The user fees are set forth in 9 CFR part 130. User fees for processing applications for permits to import certain animals and animal products are listed in the table in § 130.4. User fees for inspection at the port of entry and laboratory and facility inspections are the hourly rates set forth in § 130.30.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of VHS into aquaculture facilities by controlling the movement of live fish at risk of harboring VHS virus. Despite its current VHS-free status for farmed fish, the United States remains unprotected from continuing introductions of VHS-infected non-salmonid fish imported from Canada, since there are a number of exporters of VHS-regulated fish species in VHS-regulated areas in Canada, and pretesting of these fish is not currently required. Additionally, although VHS outbreaks have so far been limited to States within the Great Lakes watershed, there are no standardized restrictions in place other than those specified in the FWS regulations in title 50 and the existing APHIS Federal Order to prevent the further spread of VHS into new watersheds or areas by the transfer of live salmonid or non-salmonid VHS-regulated species. Therefore, it is necessary to implement regulations that will restrict such movements in as timely a manner as possible.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this interim rule. It provides an initial regulatory flexibility analysis, which considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act, as well as a cost-benefit analysis. The economic analysis is summarized below. The full economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for instructions for accessing Regulations.gov). You may request paper copies of the economic analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2007–0038 when requesting copies. The economic analysis is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this document).

Based upon available data and expected effects, we believe that the benefits of the interim rule, in terms of disease prevention, will justify the costs associated with restricting the movement of live fish. Costs associated with the interim rule will likely be difficult to distinguish from those already imposed by the amended Federal Order. Also, several of the States that will be regulated by the interim rule have regulations in place that compare closely with the interim rule. Net impacts of the interim rule therefore may be relatively small.

We first consider potential costs of the rule for producers, allied industries, and State, Federal, and Tribal authorities. Possible benefits of the rule in terms of preventing the spread of VHS virus are then examined. Third, alternatives to the rule are presented. Lastly, we address expected impacts for small entities.

Summary of Cost-Benefit Analysis

The interim rule will place restrictions on the importation and interstate movement of live VHS-regulated fish species from States within the Great Lakes Region where this disease has been confirmed. The potential impacts of the interim rule are not known, given the lack of information on aquaculture operations and commercial fisheries in the regulated areas. Additionally, little is known about the potential impacts on allied fishing industries and on hatcheries operating under Federal, State, or Tribal authority.

Benefits of the rule will accrue from preventing the spread of an emerging strain of VHS virus to aquaculture facilities beyond the regulated States. Five of these States have comprehensive regulations in place to curb the spread of the virus. Impacts of the interim rule are likely to be largely already realized because of the amended Federal Order, and may be additionally diminished in the five States that have adopted movement restrictions consistent with the interim rule.

Expected Costs of the Interim Rule

One industry that may be impacted is the wild-caught segment of the baitfish industry, to the extent that the requirements of the interim rule are more restrictive than the amended Federal Order and the regulations of the various States. However, we foresee any incremental changes to be minimal. A testing and certification protocol by which movement will be allowed under the rule is unlikely to be feasible for this segment of the industry. In addition to aquaculture and commercial fisheries, allied fishing industries such as bait shops and marinas may also be affected by the interim rule. Bait shops that sell VHS-regulated species may face tighter supplies on top of the certification requirement for sales to unregulated States.

State, Federal, and Tribal authorities may also be affected by the interim rule. Within the 8 regulated States, there are 7 Federal, 69 State, and at least 13 Tribal hatcheries. These hatcheries produce and stock fish in streams, rivers, and lakes throughout the eight States and possibly in surrounding States. The interim rule may limit production and stocking by the agencies, and therefore the availability of broodstock in the regulated States and possibly other States, depending on the species stocked. Affected States may also face a decline in the number of fishing licenses sold due to reduced stocking and a limited availability of bait.

Overall, regulated aquaculture facilities and commercial fisheries will bear the costs of testing, cleaning, and disinfection of containers, and fees associated with inspections and the issuance of permits. However, given the regulatory response to VHS to date by five of the eight regulated States, the impact of the interim rule may be muted. Many of the regulations in place in Michigan, New York, Ohio, Pennsylvania, and Wisconsin are closely aligned with the requirements in the interim rule and in some cases may be even more restrictive. In some instances, effects of the interim rule are already realized because of rules implemented at the State level. Additionally, the rule will codify restrictions and procedures already in place under the amended Federal Order. Net impacts of the interim rule are expected to be small because of the existing State regulations and the Federal Order.

Expected Benefits of the Interim Rule

The interim rule is expected to benefit aquaculture facilities. The rule is intended to curtail the introduction of the VHS virus into areas outside of the Great Lakes Region. Mississippi dominates catfish farming in the United States. Alabama and Arkansas also have fairly large sales of cultured catfish. Additionally, Arkansas boasts the largest sales of cultured baitfish, accounting for 53 percent of baitfish aquaculture according to the 2005 Census of Aquaculture. Preventing VHS from spreading to these areas will help preserve the catfish and baitfish industries, valued at almost $440 million.

Alternatives to the Interim Rule

APHIS considered three alternatives for the interim rule. The first alternative considered by the Agency would entail regulations much broader in scope than the provisions of the May 4, 2007, amended Federal Order. This alternative would restrict interstate movement of VHS-regulated species for all States where any VHS virus strain is detected, and would restrict importation of VHS-regulated species from all VHS-regulated countries, including countries in Europe, and also would regulate additional commodities. APHIS determined the interim rule will be less costly and provide the same level of protection as this alternative, based on current knowledge of the status of the two strains of VHS virus, type IV(a) and type IV(b), in the United States and Canada. VHS virus strain type IV(a) is not known to exist anywhere other than in marine environments and, thus, is unlikely to be found in the Great Lakes Region.

A second alternative considered by the Agency would be to regulate areas based on Hydrologic Unit Code (HUC) level 2, or regional, definitions. APHIS determined that regulating areas known to have VHS virus type IV(b) based on the HUC 2 definition could pose an undue burden on entities within these areas far removed from the specific location of the VHS virus type IV(b) confirmation.

Finally, APHIS considered a ''no action'' alternative. In this instance, APHIS would not implement regulations covering the interstate movement of VHS-regulated fish from VHS-regulated areas or the importation of VHS-regulated fish from VHS-regulated regions. Under this alternative, State agencies and Federal agencies other than APHIS would assume responsibility for preventing the spread of the VHS virus. Compliance with the various regulations could be burdensome for aquaculture producers and others who move fish interstate or internationally.

Summary of the Initial Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, we examined the potential economic effects the interim rule will have on small entities. The interim rule may affect aquaculture facilities, commercial harvesters, marinas, and other allied fishing industries in Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. Although information concerning many of these industries is sparse, it is likely that most

of the entities within these industries are small as defined by the Small Business Administration (SBA) guidelines.

While it is likely that the majority of firms affected by the interim rule will be small, the magnitude of the impacts is unclear given the lack of data. Aquaculture facilities in States not regulated for VHS will benefit from the interim rule because the likelihood that fish in these facilities will be exposed to this disease will be reduced. Facilities located in Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin will face costs related to testing if they raise VHS-regulated species for interstate movement. In States that have enacted their own regulations to prevent the potential spread of VHS, impacts on aquaculture facilities and commercial fishing operations as a result of this interim rule are likely to be dampened.

The interim rule will impose some additional reporting, recordkeeping, and other compliance requirements. Live VHS-regulated species of fish may be imported and moved live from regulated Provinces and States. Movement requires testing and certification as described in the interim rule. Firms wishing to move live fish will be responsible for ensuring that the fish originate from a facility that has been tested and found to be free of VHS virus. Additionally, these firms will also be responsible for obtaining the permits needed to transport fish interstate, as well as paying the user fees associated with inspection of shipments.

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with this interim rule, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The environmental assessment provides a basis for our determination that implementation of this interim rule will not have a significant impact on the quality of the human environment.

We will accept comments on the environmental assessment for 30 days. To comment, follow the instructions under **ADDRESSES** at the beginning of this document. The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this interim rule.) In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0340 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2007–0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2007–0038 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to restrict the interstate movement and importation into the United States of live fish that are susceptible to VHS. In order to be moved interstate, live VHS-regulated fish must originate from a facility that has been found free of VHS virus through testing specified in the regulations and be accompanied by an ICI issued by an accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health.

Live VHS-regulated fish to be imported into the United States may need to be accompanied by a permit and must be accompanied by a declaration and by a health certificate that states that the live fish originated in a region or facility that has demonstrated freedom from VHS through testing in accordance with the regulations. The fish must be shipped in new containers or containers that have been cleaned and disinfected to neutralize any VHS virus to which the shipping containers may have been exposed. The cleaning and disinfection protocols must be referenced in the health certificate or in a separate cleaning and disinfection certificate accompanying the shipment to the U.S. port of entry. Finally, live fish imported for slaughter or for research or diagnostic purposes must, among other things, be accompanied by a VS Form I–27, which will be issued by the port veterinarian.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2681871 hours per response.

Respondents: Accredited veterinarians, importers and exporters of VHS-regulated live fish, shippers moving VHS-regulated live fish interstate, and States.

Estimated annual number of respondents: 515.

Estimated annual number of responses per respondent: 16.601941.

Estimated annual number of responses: 8,550.

Estimated total annual burden on respondents: 2,293. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 83

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR chapter I as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 71.3 is amended as follows:

■ a. In paragraph (a), in the list of diseases which are endemic to the United States, by adding the words ''viral hemorrhagic septicemia,'' after ''chlamydiosis,''.

■ b. By adding a new paragraph (c)(5) to read as set forth below.

§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.

* * * * *

(c)(5) Fish affected with viral hemorrhagic septicemia may be moved interstate in accordance with part 83 of this subchapter.

* * * * *

■ 3. A new part 83 is added to read as follows:

PART 83—VIRAL HEMORRHAGIC SEPTICEMIA

Sec.
83.1 Definitions.
83.2 General restrictions.
83.3 Interstate movement of live VHS-regulated fish species from VHS-regulated areas.
83.4 VHS-regulated fish and VHS-regulated areas.
83.5 Interstate Certificate of Inspection (ICI).
83.6 Testing requirements.
83.7 Shipping containers; cleaning and disinfection.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 83.1 Definitions.

Accredited veterinarian. A veterinarian who is approved by the Administrator, in accordance with part 161 of this chapter, to perform official animal health work of the Animal and Plant Health Inspection Service specified in subchapters A, B, C, and D of this chapter; and to perform work required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Anadromous fish. Fish that are born and spawn in freshwater, but which spend part of their lifecycle in saltwater.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. A veterinarian or other individual employed by APHIS who is authorized to perform the services required by this part.

Approved laboratory. A laboratory authorized by a State, Tribal, or Federal competent authority for aquatic animal health to perform assays for the detection of VHS virus.

Catch-and-release fishing. Fishing for pleasure or for recreational purposes, including tournaments, organized fishing competitions, fishing derbies, or other types of contests where individuals catch, compare, and release live VHS-regulated fish. This term excludes VHS-regulated fish used, or intended to be used, as live bait.

Competent authority. The State, Tribal, or Federal entity with the legal responsibility for ensuring or supervising the implementation of aquatic animal health measures.

Cultured fish. Fish of the same species and age class, originating from the same broodstock and on the same water supply, whose care is partly or totally managed from the first life stage onwards.

Department. The United States Department of Agriculture (USDA).

Interstate. From one State into or through any other State.

Interstate Certificate of Inspection (ICI). An official document issued by an accredited veterinarian or a State, Tribal, or Federal competent authority in the originating State that certifies that the fish being moved interstate originated from a facility that has been found free of VHS virus.

Moved (movement). Shipped, transported, delivered, or otherwise aided, induced, or caused to be moved.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

Secure water source. A biosecure water supply that does not contain pathogens or has not had the opportunity to be contaminated with pathogens. Biosecure water supplies include well, spring, or borehole water; surface water that does not contain fish populations; or water that has been treated to eliminate aquatic animal pathogens.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

State animal health official. The State official responsible for livestock, disease control, and eradication programs.

VHS-regulated area. Any State or portion of a State listed in accordance with § 83.4.

VHS-regulated fish. Any fish species listed in accordance with § 83.4.

VHS virus. Any North American (type IV) strain of viral hemorrhagic septicemia (VHS) virus, a rhabdovirus of fish.

Viral hemorrhagic septicemia (VHS). A disease caused by infection with VHS virus.

§ 83.2 General restrictions.

Live VHS-regulated fish may not be moved interstate from a VHS-regulated area except in compliance with this part.

§ 83.3 Interstate movement of live VHS-regulated fish species from VHS-regulated areas.

(a) Except as provided in paragraphs (b) through (e) of this section, live VHS-regulated fish, including fish moved to live fish markets, may only be moved interstate from a VHS-regulated area if the fish originated from a facility that has been found free of the VHS virus in accordance with § 83.6 and the fish are accompanied by an Interstate Certificate of Inspection (ICI) issued by an accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health.

(b) Live VHS-regulated fish may be moved interstate directly to a slaughtering establishment provided that:

(1) The fish are accompanied by a VS Form 1–27;

(2) The fish are transported in sealed conveyances;

(3) The slaughtering establishment meets the following conditions:

(i) The slaughtering establishment discharges its waste water to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(ii) Offal, including carcasses, from the slaughtering establishment is either rendered or composted.

(4) Any water used to transport the fish is disposed of in a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(c) Live VHS-regulated fish may be moved interstate for research or diagnostic purposes provided that:

(1) The fish are accompanied by a VS Form 1–27;

(2) The fish are transported in sealed conveyances;

(3) The facility that receives the fish meets the following conditions:

(i) The facility discharges its waste water to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(ii) Offal, including carcasses, from the facility is either rendered or composted.

(4) Any water used to transport the fish is disposed to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(d) Live VHS-regulated fish may be moved interstate during catch-and-release fishing.

(e) The Administrator may, on a case-by-case basis, permit the interstate movement of fish not otherwise provided for in this part, under such conditions as the Administrator may prescribe in each case to prevent the introduction and dissemination of VHS.

(Approved by the Office of Management and Budget under control number 0579–0340)

§ 83.4 VHS-regulated fish and VHS-regulated areas.

(a)(1) APHIS will list as a VHS-regulated fish any fish species found in freshwater to be susceptible to the North American (type IV) strain of VHS virus under natural (i.e., non-controlled) conditions of exposure and from which VHS virus has been isolated in cell culture or other assay determined by the Administrator to be adequate to detect VHS virus, with confirmation of strain identity through genetic sequencing. Anadromous fish that have migrated into freshwater and from which VHS strain type IV(a) has been isolated will not be considered VHS-regulated fish.

(2) If APHIS determines that, in accordance with the criteria in paragraph (a)(1) of this section, a species should be added to the list of VHS-regulated species, APHIS will publish a notice in the **Federal Register** announcing that determination.

(b)(1) APHIS will list as a VHS-regulated area each State or portion of a State from which VHS virus has been detected in any VHS-regulated fish species (with or without clinical signs of disease) in a water source that is not a secure water source, or which the Administrator determines should be regulated based on criteria such as inadequate surveillance or movement requirements, or other epidemiologic information.

(2) If the Administrator determines that a State or portion of a State meets the criteria in paragraph (b)(1) of this section, APHIS will publish a notice of its decision in the **Federal Register** and take comments from the public. The designation as a VHS-regulated area will become effective upon publication of this notice. After reviewing the comments, APHIS will issue a second notice in the **Federal Register** announcing its decision on whether or not the designation as a VHS-regulated area will remain in effect.

(c) APHIS maintains the lists of VHS-regulated fish and VHS-regulated areas on the APHIS aquaculture Web site at *http://www.aphis.usda.gov/animal_health/animal_dis_spec/aquaculture.* The lists may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Aquaculture Program, 4700 River Road Unit 46, Riverdale, MD 20737–1231.

§ 83.5 Interstate Certificate of Inspection (ICI).

(a) Live VHS-regulated fish moved interstate in accordance with § 83.3(a) must be accompanied by an ICI issued by an accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health. An ICI will be valid for 30 days from the date of issuance.

(b) The ICI must state that:

(1) The live fish were inspected by the accredited veterinarian or a State, Tribal, or Federal competent authority for aquatic animal health within 72 hours prior to shipment, and were found to be free of any clinical signs of disease consistent with VHS.

(2) The live fish covered by the ICI originated in an area or facility that has demonstrated freedom from VHS in accordance with § 83.6.

(c) The ICI must include the following information:

(1) The name, address, and phone number of the owner or owner's agent.

(2) The name, address, and phone number of the facility in which the fish originated.

(3) The name, address, and phone number of the person or facility who will receive the fish; or the State or other regulatory authority responsible for oversight of the environment in which the fish will be introduced.

(4) The name, address, and phone number of the shipping or transportation company.

(5) The species and number of the fish.

(6) The lot (or other) identification of the shipment.

(7) The name, address, and phone number of the approved laboratory that performed the testing required by § 83.6.

(i) The number of fish tested;

(ii) The assay(s) used for testing; and

(iii) The test results.

(8) The date the certificate was issued.

(9) The type of water source according to § 83.6(c).

(Approved by the Office of Management and Budget under control number 0579–0340)

§ 83.6 Testing requirements.

(a) A facility can demonstrate freedom from VHS through negative testing results provided by an approved laboratory. Testing must meet the following conditions:

(1) Be conducted with a sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the facility.

(i) Facilities with cultured fish of VHS-regulated species which can document a 2-year history of negative testing for VHS virus, can conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 5 percent prevalence of infection in the facility. Such testing must be conducted twice a year, with at least 3 months between tests.

(ii) Facilities with cultured fish of VHS-regulated species which can document a 4-year history of negative testing for VHS virus can conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 10 percent prevalence of infection in the facility. Such testing must be conducted twice a year, with at least 3 months between tests.

(iii) Such facilities must be on a secure water source, and document that any VHS-regulated species in the facility that originated in VHS-regulated States or Canadian provinces originate from facilities of the same or higher health status.

(2) Include virus isolation or other assays authorized by the Administrator, using appropriate cell lines to detect VHS virus, if present. All suspect VHS cytopathic effects must be positively identified as VHS through molecular assays and/or genetic sequencing.

(3) Use proportional numbers of each VHS-regulated fish species which might be present in the facility.

(4) Be conducted at water temperatures between 50 and 72 °F, or at other times or under environmental conditions when VHS is most likely to be detected, if present.

(b) When APHIS adds a new species to the list of VHS-regulated species after a facility has been determined to be free of VHS in accordance with paragraph (a) of this section, the facility must conduct additional testing on fish of the newly listed species, if present in the facility, and the fish must be free of VHS virus for the facility to retain its free status. VHS testing must be conducted on each newly listed species with a sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the facility.

(c) For VHS-regulated fish maintained on a secure water source, test results will be *valid* for 6 months from the date of sample collection provided that no fish of a lesser or unknown health status are introduced into the facility. Test results for fish held on a water source that is not a secure water source will be valid for 30 days from the date of sample collection.

§ 83.7 Shipping containers; cleaning and disinfection.

(a) All live fish that are to be moved interstate in accordance with § 83.3(a) must be moved in new containers or in containers that have been cleaned and disinfected.

(1) Cleaning and disinfection of shipping containers must be monitored by the accredited veterinarian or State, Tribal, or Federal competent authority for aquatic animal health who issues the ICI.

(2) Cleaning and disinfection must be sufficient to neutralize any VHS virus to which shipping containers may have been exposed.

(3) The cleaning and disinfection protocols used must be referenced in the ICI or in a separate cleaning and disinfection certificate accompanying the shipment.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0340)

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 4. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 5. Section 93.900 is amended by adding the following definitions in alphabetical order to read as set forth below.

§ 93.900 Definitions.

* * * * *

Anadromous fish. Fish that are born and spawn in freshwater, but which spend part of their lifecycle in saltwater.

* * * * *

Approved laboratory. A laboratory authorized by the competent authority of a country for aquatic animal health to perform assays for the detection of VHS virus.

Catch-and-release fishing. Fishing for pleasure or for recreational purposes, including tournaments, organized fishing competitions, fishing derbies, or other types of contests where individuals catch, compare, and release live VHS-regulated fish. This term excludes VHS-regulated fish used, or intended to be used, as live bait.

* * * * *

Cultured fish. Fish of the same species and age class, originating from the same broodstock and on the same water supply, whose care is partly or totally managed from the first life stage onwards.

* * * * *

Secure water source. A biosecure water supply that does not contain pathogens or has not had the opportunity to be contaminated with pathogens. Biosecure water supplies include well, spring, or borehole water; surface water that does not contain fish populations; or water that has been treated to eliminate aquatic animal pathogens.

* * * * *

VHS-regulated fish. Any fish species listed in accordance with § 93.910.

VHS-regulated region. Any region listed in accordance with § 93.910.

VHS virus. Any North American (type IV) strain of VHS virus, a rhabdovirus of fish.

Viral hemorrhagic septicemia (VHS). A disease caused by infection with VHS virus.

§§ 93.901 through 93.906 [Undesignated heading added]

■ 6. Subpart I is amended by adding an undesignated center heading, ''General Provisions for SVC-Regulated Fish Species'', preceding § 93.901.

§§ 93.907 through 93.909 [Reserved]

■ 7. Sections 93.907 through 93.909 are added and reserved.

■ 8. An undesignated center heading and new §§ 93.910 through 93.916 are added to subpart I after the newly reserved §§ 93.907 through 93.909 to read as follows:

General Provisions for VHS-Regulated Fish Species

§ 93.910 General restrictions; exceptions.

(a) No live VHS-regulated species of fish may be imported into the United States from VHS-regulated regions except in accordance with this subpart or the regulations of the U.S. Fish and Wildlife Service (FWS) in 50 CFR 16.13(a)(3) and 16.13(b), nor may such live VHS-regulated fish be moved from the port of entry after arrival until released by an APHIS representative or FWS official; *Provided*, that the Administrator may, upon request in specific cases, allow the importation of live VHS-regulated fish into the United States under conditions other than those specifically set forth in this subpart

when the Administrator determines that such movement will not result in the further introduction of VHS into the United States.

(b)(1) APHIS will list as a VHS-regulated fish any fish species found in freshwater to be susceptible to the North American (type IV) strain of VHS virus under natural (i.e., non-controlled) conditions of exposure and from which VHS virus has been isolated in cell culture or other assay determined by the competent authority to be adequate to detect VHS virus, with confirmation of strain identity through genetic sequencing. Anadromous fish species that have migrated into freshwater and from which VHS strain type IV(a) has been isolated will not be considered VHS-regulated fish.

(2) If APHIS determines that, in accordance with the criteria in paragraph (b)(1) of this section, a species should be added to the list of VHS-regulated species, APHIS will publish a notice in the **Federal Register** announcing that determination.

(c)(1) APHIS will list as a VHS-regulated region any region in which VHS virus has been officially reported to the World Health Organization for Animal Health by the country's competent authority for aquatic animal health from any fish species in a water source that is not a secure water source, or which the Administrator determines to be at risk of having VHS based on criteria such as inadequate surveillance, less restrictive import requirements, or other epidemiologic information.

(2) If the Administrator determines that a region meets the criteria in paragraph (c)(1) of this section, APHIS will publish a notice of its decision in the **Federal Register** and take comments from the public. The designation as a VHS-regulated region will become effective upon publication of this notice. After reviewing the comments, APHIS will issue a second notice in the **Federal Register** announcing its decision on whether or not the designation as a VHS-regulated region will remain in effect.

(d) APHIS maintains the lists of VHS-regulated fish and VHS-regulated regions on the APHIS aquaculture Web site at *http://www.aphis.usda.gov/animal_health/animal_dis_spec/aquaculture*. The lists may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Aquaculture Program, 4700 River Road Unit 46, Riverdale, MD 20737–1231.

(e) Other provisions of this subpart relating to the importation of live VHS-regulated fish shall not apply to shipments of such fish imported from VHS-regulated regions if they are imported in accordance with the FWS regulations in 50 CFR 16.13.

(f) Other provisions of this subpart relating to the importation of live VHS-regulated fish shall not apply to shipments of such fish in transit through the United States, if an import permit has been obtained under § 93.912 and all conditions of the permit are observed, and if the live VHS-regulated fish species are handled as follows:

(1) They are maintained under continuous confinement while in transit through the United States aboard an aircraft, ocean vessel, or other means of conveyance; or, if they are unloaded in the course of such transit, they are placed in a holding facility that is provided by the carrier or its agent and has been approved by the Administrator as adequate to prevent the spread within the United States of any finfish disease; they are maintained there under continuous confinement until loaded aboard a means of conveyance for transportation from the United States; and they are maintained under continuous confinement aboard such means of conveyance until it leaves the United States.

(2) They are moved in accordance with any additional conditions prescribed in the permit that the Administrator has determined to be necessary to ensure that the fish do not introduce VHS into the United States.

(3) For a holding facility to be approved by the Administrator, the following conditions must be met:

(i) The holding facility must be sufficiently isolated to prevent direct or indirect contact of the live fish it contains with any other live VHS-regulated fish species in the United States.

(ii) The holding facility must be constructed to provide adequate protection against environmental conditions and so that it can be adequately cleaned, washed, and disinfected.

(iii) Provision must be made for disposal of fish carcasses, shipping water, effluent, waste, and any associated shipping materials in a manner that will prevent dissemination of disease.

(iv) Provision must be made for adequate sources of feed and water and for attendants for the care and feeding of fish in the facility.

(v) The holding facility must comply with all applicable local, State, and Federal requirements for environmental quality.

(vi) The holding facility must comply with any additional requirements that the Administrator may impose on a particular shipment in order to prevent the dissemination of disease.

(g) Other provisions of this subpart relating to the importation of live VHS-regulated fish shall not apply to fish moved into the United States from VHS-regulated regions during catch-and-release fishing.

§ 93.911 Ports designated for the importation of live VHS-regulated fish species.

(a) Live VHS-regulated fish from VHS-regulated regions may be imported into the United States without an import permit through the following Canadian border ports: Eastport, ID; Houlton and Jackman, ME; Detroit, Port Huron, and Sault Ste. Marie, MI; Baudette, MN; Opheim, Raymond, and Sweetgrass, MT; Alexandria Bay, Buffalo, and Champlain, NY; Dunseith, Pembina, and Portal, ND; Derby Line and Highgate Springs, VT; and Oroville and Sumas, WA.

(b) Live VHS-regulated fish may be imported into the United States with an import permit through the following ports: Anchorage, AK; Los Angeles and San Francisco, CA; Miami and Tampa, FL; Atlanta, GA; Honolulu, HI; Chicago, IL; Boston, MA; Newark, NJ; Jamaica and Newburgh, NY; Portland, OR; Memphis, TN; Dallas-Ft. Worth, TX; Seattle, WA; and San Juan, PR.

(c) *Designation of other ports.* Other ports may be designated by the Administrator in specific cases with the concurrence of the Secretary of the Department of Homeland Security.

§ 93.912 Import permits.

(a) Live VHS-regulated fish imported from VHS-regulated regions through a limited port as described in § 93.911(b) must be accompanied by an import permit issued by APHIS and must be imported within 30 days of the proposed arrival date stated in the import permit.

(b) An application for an import permit must be submitted for each shipment of live VHS-regulated fish to the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231. Application forms for import permits may be obtained from this address. Applications may also be obtained from the following APHIS Web site: *http://www.aphis.usda.gov/vs/ncie/pdf/vs17-129.pdf.*

(c) A completed application must include the following information:

(1) The name and address of the person intending to export live VHS-regulated fish to the United States;

(2) The proposed date of shipment to the United States;

(3) The name and address of the person intending to import live VHS-regulated fish into the United States;

(4) The species and number of live VHS-regulated fish to be imported into the United States;

(5) The purpose of the importation;

(6) The port of embarkation;

(7) The mode of transportation;

(8) The route of travel, including all carrier stops en route;

(9) The port of entry in the United States;

(10) The proposed date of arrival in the United States; and

(11) The name and address of the person to whom the live VHS-regulated fish will be delivered in the United States.

(d) If APHIS determines that the live VHS-regulated fish from VHS-regulated regions are eligible for importation, APHIS will issue an import permit indicating the applicable conditions for importation. An import permit does not guarantee that any live VHS-regulated fish will be allowed entry into the United States; the VHS-regulated fish will be allowed to enter the United States only if they meet all applicable requirements of the permit and regulations.

(Approved by the Office of Management and Budget under control number 0579–0340)

§ 93.913 Health certificate.

(a) *General.* All live VHS-regulated fish that are imported from VHS-regulated regions for other than immediate slaughter or research or laboratory use must be accompanied by a health certificate issued by a full-time salaried veterinarian of the national government of the exporting country, or issued by a certifying official and endorsed by the competent authority of that country. The health certificate must be written in English or contain an English translation. The health certificate will be valid for 30 days from the date of issuance. The health certificate for the live VHS-regulated fish must state that:

(1) The live fish were inspected by the veterinarian or certifying official who issued the certificate within 72 hours prior to shipment, and were found to be free of any clinical signs of disease consistent with VHS; and

(2) The live fish covered by the health certificate originated in a region or facility that has demonstrated freedom from VHS through testing in accordance with paragraphs (b) and (c) of this section.

(b) *Testing.* A facility can demonstrate freedom from VHS through negative testing results by a pathogen detection laboratory approved for VHS viral assays by the competent authority of that country. Testing must meet the following conditions:

(1) Testing must be conducted with a testing sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the facility.

(i) Facilities with cultured fish of VHS-regulated species which can document a 2-year history of negative testing for VHS virus can conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 5 percent prevalence of infection in the facility. Such testing must be conducted twice a year, with at least 3 months between tests.

(ii) Facilities with cultured fish of VHS-regulated species which can document a 4-year history of negative testing for VHS virus can conduct testing at a sampling level to provide a 95 percent confidence level of detecting a 10 percent prevalence of infection in the facility. Such testing must be conducted twice a year, with at least 3 months between tests.

(iii) Such facilities must be on a secure water source, and document that any VHS-regulated species in the facility that originated in VHS-regulated States or Canadian provinces originate from facilities of the same or higher health status.

(2) Tests must include virus isolation or other assays authorized by the competent authority, using appropriate cell lines to detect VHS virus, if present. All suspect VHS cytopathic effects must be positively identified as VHS through molecular assays and/or genetic sequencing.

(3) Proportional numbers of each VHS-regulated fish species which might be present in a shipment must be used for testing, if applicable.

(4) Testing must be conducted at water temperatures between 50 and 72 °F, or at other times or under environmental conditions when VHS virus is most likely to be detected, if present.

(c) When APHIS adds a new species to the list of VHS-regulated species after a facility has been determined to be free of VHS in accordance with paragraph (b) of this section, the facility must conduct additional testing on fish of the newly listed species, if present in the facility, and the fish must be free of VHS virus for the facility to retain its free status. VHS testing must be conducted on each newly listed species with a sample size that provides for a 95 percent confidence level of detecting a 2 percent prevalence of infection in the fish facility.

(d) *Shipping containers.* Except as provided in § 93.910(e)–(g), all live fish that are to be shipped to the United States must be shipped in new containers or in containers that have been cleaned and disinfected.

(1) Cleaning and disinfection of shipping containers must be monitored by the veterinarian or certifying official who issues the health certificate.

(2) Cleaning and disinfection must be sufficient to neutralize any VHS virus to which shipping containers may have been exposed.

(3) The cleaning and disinfection protocols used must be referenced in the health certificate or in a separate cleaning and disinfection certificate accompanying the shipment to the U.S. port of entry.

(Approved by the Office of Management and Budget under control number 0579–0340)

§ 93.914 Declaration and other documents.

(a) For live VHS-regulated fish offered for importation under this subpart, the importer or his or her agent must submit the following documents to the appropriate Customs and Border Protection officer for use by the port veterinarians:

(1) All permits, certificates, or other documentation required under §§ 93.912 and 93.913; and

(2) Two copies of a declaration that lists the port of entry; the name and address of the importer; the name and address of the broker; the origin of the live fish; the number, species, and the purpose of the importation; the name of the person to whom the fish will be delivered; and the location of the place to which such delivery will be made.

(Approved by the Office of Management and Budget under control number 0579–0340)

§ 93.915 Inspection at the port of entry.

(a) Shipments of live VHS-regulated fish must be presented for inspection at a port of entry designated under § 93.911. For live fish entering through a limited port listed in § 93.911(c), the APHIS port veterinarian must be notified at least 72 hours in advance of the arrival in the United States of the shipment. Any shipment that does not meet the requirements of this subpart will be refused entry.

(b) Shipments refused entry must be exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, or the shipment will be disposed of as the Administrator may direct.

(Approved by the Office of Management and Budget under control number 0579–0340)

§ 93.916 Special provisions.

(a) *Slaughter.* Live VHS-regulated fish from VHS-regulated regions may be imported directly for slaughter under the following conditions:

(1) An import permit has been obtained under § 93.912 and all conditions of the permit are observed.

(2) An APHIS representative at the port seals the means of conveyance with official seals.

(3) The shipment is moved directly from the port of entry to a slaughtering establishment that meets the following conditions:

(i) The slaughtering establishment discharges its waste water to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(ii) Offal, including carcasses, from the slaughtering establishment is either rendered or composted.

(4) An APHIS representative will unseal the vehicle upon arrival at the slaughtering establishment.

(5) Any water used to transport the fish is disposed to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(b) *Research or laboratory use.* Live VHS-regulated fish may be imported from a VHS-regulated region for research or laboratory use under the following conditions:

(1) An import permit has been obtained under § 93.912 and all conditions of the permit are observed.

(2) The laboratory or research facility disposes of effluent to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

(3) Carcasses must be rendered or composted.

(4) Any water used to transport the fish is disposed to a municipal sewage system that includes waste water disinfection sufficient to neutralize any VHS virus or to either a non-discharging settling pond or a settling pond that disinfects, according to all applicable local, State, and Federal regulations, sufficiently to neutralize any VHS virus.

Done in Washington, DC, this 4th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–20852 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 381, and 442

[Docket No. FSIS–2008–0015]

RIN # 0583–AD17

Determining Net Weight Compliance for Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to reference the most recent version of the National Institute of Standards and Technology (NIST) Handbook 133 that contains standards for determining the reasonable variations allowed for the declared net weight on labels of immediate containers of meat and poultry products; the procedures to be used to determine the net weight and net weight compliance of meat and poultry products; and related definitions. The Agency is also consolidating the separate net weight regulations for meat and poultry products in a new CFR part, applicable to both meat and poultry products.

This final rule does not incorporate by reference sections in Handbook 133 that concern the ''wet tare'' method for determining net weight. The ''wet tare'' method does not include free-flowing liquid as part of the product but as part of the tare weight. The Agency regards any solutions that are added to meat or poultry to be part of the product and considers free-flowing liquids to be an integral component of these products, and therefore uses the ''dry tare'', not the ''wet tare'' method.

DATES: *Effective Date:* This regulation is effective October 9, 2008. The incorporation by reference of the NIST Handbook 133, Fourth Edition, is approved by the Director of the Federal Register as of October 9, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Gioglio, Director, Labeling and Program Delivery Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0010.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470), and the regulations that implement these Acts. The FMIA and the PPIA require that packages of meat and poultry products bear an accurate statement of the quantity of their contents in terms of weight, measure, or numerical count (21 U.S.C. 601(n)(5) and 453(b)(5)). The FMIA and PPIA also provide the Secretary of Agriculture with the authority to prescribe standards of fill of containers for such articles (21 U.S.C. 607(c)(2), 457(b)(2)) that are not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301–392). In implementing regulations, FSIS has elected to adopt the relevant NIST standards established for determining compliance with the net weight contents statement of packaged goods that are enumerated in NIST Handbook 133. Consequently, FSIS has incorporated by reference certain NIST standards in the Federal meat and poultry inspection regulations.

NIST was established by Congress in 1988 to assist industry in the development of technology to improve product quality, to modernize manufacturing processes, to ensure product reliability, and to facilitate rapid commercialization of products based on new scientific discoveries. NIST's basic functions include developing, maintaining, and retaining custody of the national standards of measurement and providing the means and methods for comparing standards used in science, engineering, manufacturing, commerce, industry, and education with the standards adopted or recognized by the Federal Government.

NIST Handbook 133 is a procedural guide for compliance testing of net content statements on packaged goods. FSIS has elected to make mandatory the NIST standards in Handbook 133 regarding the determination of the reasonable variations allowed from the declared net weight on labels of immediate containers of meat and poultry products, the procedures to be used to determine net weight and net weight compliance for meat and poultry products, and related definitions.

Consequently, FSIS currently incorporates by reference the NIST standards from Handbook 133 in its meat and poultry regulations. The Agency first incorporated NIST Handbook 133 by reference in

November 1990 (FR 55 49826) as instructions to inspection personnel for determining net weight compliance. In January 2005, NIST published a revised edition of Handbook 133.

On March 28, 2006, FSIS published a proposed rule in the **Federal Register** to amend the Federal meat and poultry products inspection regulations to reference the most recent version of NIST Handbook 133, which contains standards for determining reasonable variations allowed for the declared net weight on labels of immediate containers of meat and poultry products; the procedures used to determine the net weight and the net weight compliance of meat and poultry products; and related definitions (71 FR 15340). The Agency also proposed to consolidate the separate net weight regulations for meat and poultry products in a new CFR part applicable to both meat and poultry products. On April 19, 2006, FSIS published a technical correction to the proposed rule to reference the NIST Handbook 133 dated January 2005 (71 FR 20041). The proposed rule incorrectly referenced the NIST Handbook 133 dated January 2002.

This final rule is consistent with the proposed rule. However, the rule proposed to incorporate by reference tare procedures and definitions in NIST Handbook 133 that concern the ''wet tare'' method. After considering the comments on the proposed rule, FSIS has decided not to incorporate by reference sections in Handbook 133 that concern the ''wet tare'' method for determining net weight. As explained below, these sections are not relevant to how FSIS enforces the FMIA and the PPIA, and therefore there is no reason to incorporate them. Also in response to comments, 9 CFR 442.3 has been modified to refer to scales used to determine the net weight of meat and poultry products. FSIS made this change to clarify the regulations.

Comments and Responses

FSIS received 5 comments in response to the March 28, 2006, proposed rule. Four comments were from meat and poultry trade associations. One of those comments was jointly submitted by six trade associations. One comment was from an individual. The trade associations, in general, supported the incorporation of the NIST Handbook 133 by reference and combining and consolidating the meat and poultry net weight provisions into one part. The comment from the individual opposed using any standards referenced in another document.

Comment: One comment stated that while the proposed rule was intended to simply update the regulations to incorporate the current edition of the NIST Handbook 133, FSIS should take the opportunity to underscore the guidance that the Agency has communicated concerning how to account for free-flowing liquid that is contained within the packaging of meat and poultry products.

Three comments, including two petitions that the Agency is treating as comments, stated that by referencing the NIST Handbook 133 ''wet tare'' procedures, the Agency is continuing to incorporate inconsistencies and should remove the conflicting reference.

Response: FSIS agrees that the regulations should be modified to remove references to the ''wet tare'' method for determining net weight compliance.

The ''tare weight'' is ''the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight.'' FSIS regards any solutions that are added to meat or poultry, or into which the meat or poultry is placed for flavoring, seasoning, or tenderizing, to be part of the product. Similarly, FSIS considers free-flowing liquids in packages of meat and poultry products to be integral components of these products. Therefore, when FSIS inspectors determine net weight compliance in official establishments, inspectors include any free flowing liquid contained in the packaging. This method of determining net weight is called a ''dry tare'' method. When net weight is determined based on a dry tare method, the gross weight of the product includes free-flowing liquid and excludes the dry or dried packaging material.

The NIST Handbook 133 describes ''Tare Procedures,'' in Chapter 2, Section 2.3 ''Basic Test Procedure.'' In this section there are two methods for determining the dry tare of products, the ''used'' and ''unused'' methods. The ''used dry tare'' method considers the actual packaging material the product was removed from to be tare. The ''unused dry tare'' method is used for testing packages in retail store locations where they are packaged and allows samples of the packaging material available in the store to be considered tare. FSIS inspectors use the used dry tare method, but both dry tare methods are consistent with FSIS' position concerning product net weight. In determining net weight of meat or poultry products, both dry tare methods include the free flowing liquids in product packages.

The Tare Procedures section of Handbook 133 also describes the ''wet tare'' method for determining net weight compliance. The ''wet tare'' method does not include free-flowing liquids as part of the product but as part of the tare weight. As stated previously, FSIS considers free-flowing liquid part of the product and does not use the ''wet tare'' for determining net weight compliance.

After considering the comments received, FSIS agrees that it makes little sense to incorporate a method that it does not use. Doing so only creates confusion and ambiguity about what method is used by FSIS. Consequently, FSIS is modifying the regulations so that the references to the ''wet tare'' method for determining net weight compliance in NIST Handbook 133 are *not* incorporated by reference. As previously stated, the Agency considers the free-flowing liquids in packages of meat and poultry products, including single-ingredient, raw poultry products, to be integral components of these products.

Although State and county government officials have concurrent authority to enforce net weight requirements for meat and poultry products at the local level, they must do so in a manner that does not conflict with Federal requirements. Under 21 U.S.C. 678 and 476e, marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under the FMIA or PPIA may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection. To be consistent with this final rule, State and local officials must determine net weight compliance for meat and poultry products, including single-ingredient, raw poultry, in a manner that includes the free flowing liquids as part of the product and not part of the tare weight.

Comment: One comment requested that the regulation pertaining to scale requirements, 9 CFR 442.3(a), be amended to clarify the definition and intent of ''all scales'' to say ''scales used to weigh meat and poultry products in compliance with NIST Handbook 133.'' The comment also requested that the scale testing regulation be amended to clarify that ''any repairs, adjustments, or replacements'' that require reinspection and retesting are those ''repairs, adjustments, or replacements'' affecting the accuracy of the scale. In addition, the comment requested clarification as to the identity of the ''USDA official'' who would be authorized to reinspect and retest a repaired scale.

Response: FSIS agrees that 9 CFR 442.3 should be clarified to refer to the

scales that are used to weigh meat and poultry products for net weight compliance. Therefore, FSIS has amended the regulation (9 CFR 442.3(a), (b), and (c)) to refer to ''scales used to determine the net weight of meat and poultry products.''

Regarding the comment to clarify that only repairs, adjustments, or replacements that affect accuracy need to be reinspected and retested before the scale can be used, FSIS cannot adequately specify in the regulations that repairs, adjustments, or replacements will or will not affect accuracy. If a scale needs a battery replacement, computer program upgrade, or new cord installation, there is no way to determine whether the repairs, adjustments, or replacements affect the accuracy of the scale without retesting or reinspecting the scale. Therefore, FSIS is not amending 9 CFR 442.3(a) in response to the comment.

FSIS also is not amending the regulations to specify which USDA officials are authorized to reinspect and retest a scale that has been found inaccurate, repaired, adjusted, or replaced. The Agency requires flexibility in determining who is available and qualified to reinspect and retest scales used to weigh meat or poultry products at federally inspected establishments.

Comment: Two comments agreed with the proposed changes and requested that FSIS use this opportunity to provide a more complete explanation as to the procedural nature of NIST Handbook 133, and that it cannot serve as a compliance document.

Response: FSIS' net weight regulations (9 CFR 317.18–317.22 and 381.121a–381.121e) state that the procedures set forth are for determining ''net weight compliance.'' This final rule incorporates the relevant parts of the latest edition of the NIST Handbook 133 into FSIS regulations. Therefore, the incorporated provisions of NIST Handbook 133 do not serve merely as compliance guidance but are in fact made part of the meat and poultry products inspection regulations.

Comment: One comment objected to the use of standards that are not specifically listed in the regulation but are in a referenced publication that is not publicly available.

Response: FSIS does not agree with this comment. The NIST Handbook 133 is available to the public via the National Institute of Standards and Technology Web site *http://ts.nist.gov/WeightsAndMeasures/h1334–05.cfm.*

In addition, the regulations provide that a notice of any change in the Handbook cited therein will be published in the **Federal Register**.

Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this final rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

There are no costs associated with this final rule. The intent of this final rule is to amend the meat and poultry inspection regulations to incorporate by reference the relevant standards in revised Handbook 133, which are not substantively changed from those in the version of Handbook 133 that is currently reflected in FSIS' meat and poultry inspection regulations regarding the procedures to be used to determine the net weight of, and net weight compliance for, meat and poultry products. In addition, this final rule consolidates the meat and poultry net weight regulations into a new 9 CFR part 442 which will be applicable to both meat and poultry products.

Effect on Small Entities

FSIS has determined that this final rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule reflects an updated version of the NIST Handbook 133 standards for determining net weight compliance for meat and poultry products.

Paperwork Reduction Act

This final rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements. The information collection was approved under OMB number 0583–0094. This proposed rule contains no other paperwork requirements.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of communicating electronically with the government to the maximum extent possible. The Agency will ensure that all forms used by the establishments are made available electronically.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2008_Interim_&_Final_Rules_Index/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

9 CFR Part 442

Food labeling, Incorporation by reference, Meat inspection, Poultry and poultry products.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

■ 1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§§ 317.18 through 317.22 [Removed and Reserved]

■ 2. Remove and reserve §§ 317.18 through 317.22.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§§ 381.121a through 381.121e [Removed and Reserved]

■ 4. Remove and reserve §§ 381.121a through 381.121e.

Subchapter E—Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act

■ 5. Subchapter E is amended by adding a new part 442 to read as follows:

PART 442—QUANTITY OF CONTENTS LABELING AND PROCEDURES AND REQUIREMENTS FOR ACCURATE WEIGHTS

Sec.

442.1 Quantity of contents labeling
442.2 Definitions and procedures for determining net weight compliance
442.3 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection
442.4 Testing of scales
442.5 Handling of failed product

Authority: 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 442.1 Quantity of contents labeling.

This part prescribes the procedures to be followed for determining net weight compliance and prescribes the reasonable variations allowed from the declared net weight on the labels of immediate containers of products in accordance with 9 CFR 317.2(c)(4), 317.2(h), and 381.121.

§ 442.2 Definitions and procedures for determining net weight compliance.

(a) For the purpose of § 442.1 of this part, the reasonable variations allowed, and the definitions and the procedures to be used, in determining net weight and net weight compliance are presented in the National Institute of Standards and Technology (NIST) Handbook 133, ''Checking the Net Contents of Packaged Goods,'' Fourth Edition, January 2005, which is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of NIST Handbook 133 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, 732 N. Capitol Street, NW., Washington, DC, 20401. You may contact the Government Printing Office Toll-Free at 1–866–512–1800 or go to: *http://bookstore.gpo.gov*. You may inspect a copy of NIST Handbook 133 at the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 2534, Washington, DC 20250. You can contact the FSIS Docket room by calling 202–720–0344 or 202–720–3813. The NIST Handbook 133 is also 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.html*.

(b) The following NIST Handbook 133 requirements are not incorporated by reference.

Chapter 2—Basic Test Procedure—Gravimetric Testing

2.3 Basic Test Procedure—Tare Procedures—*Wet Tare*
2.3 Basic Test Procedure—Moisture Allowances—*What moisture allowance is used with wet tare when testing packages bearing a USDA seal of inspection?*
2.4 Borax

Chapter 3—Test Procedures—For Packages Labeled by Volume

3.5 Mayonnaise and Salad Dressing
3.7 Pressed and Blown Glass Tumblers and Stemware
3.8 Volumetric Test Procedures for Paint, Varnish, and Lacquers—Non Aerosol
3.9 Testing Viscous Materials—Such as Caulking Compounds and Pasters
3.10 Peat Moss
3.11 Mulch and Soils Labeled by Volume
3.12 Ice Cream Novelties
3.13 Fresh Oysters Labeled by Volume
3.14 Determining the Net Contents of Compressed Gas Cylinders
3.15 Volumetric Test Procedures for Packaged Firewood with a Labeled Volume of 133 L (4 Cu Ft) or Less
3.16 Boxed Firewood
3.17 Crosshatched Firewood
3.18 Bundles and Bags of Firewood

Chapter 4—Test Procedures—Packages Labeled by Count, Linear Measure, Area, Thickness, and Combinations of Quantities

4.5 Paper Plates and Sanitary Paper Products
4.6 Special Test Requirements for Packages Labeled by Linear or Square Measure (Area)
4.7 Polyethylene sheeting
4.8 Packages Labeled by Linear or Square (Area) Measure
4.9 Bailer Twine—Test Procedure for Length
4.10 Procedure for Checking the Area Measurement of Chamois Appendix C Glossary—wet tare

§ 442.3 Scale requirements for accurate weights, repairs, adjustments, and replacements after inspection.

(a) All scales used to determine the net weight of meat and poultry products sold or otherwise distributed in commerce in federally inspected meat and poultry establishments will be installed, maintained, and operated in a manner that ensures accurate weights. Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' 1999 Edition, November 1988, which is incorporated by reference. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited here will be published in the **Federal Register**. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The incorporation information also is available for inspection at the Office of the **Federal Register** Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.

(b) All scales used to determine the net weight of meat or poultry products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act and section 5(c) of the Poultry Products Inspection Act shall be of sufficient capacity to weigh the entire unit or package.

(c) No scale will be used at a federally inspected establishment to determine the net weight of meat or poultry products unless it has been found upon test and inspection, as specified in NIST Handbook 44 to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments, or replacements are made to a scale, it shall not be used until it has been reinspected and retested by a USDA official, or a State or local government weights and measures official, or a State registered or

licensed scale repair firm or person, and it must meet all accuracy requirements as specified in NIST Handbook 44. If a USDA inspector has put a ''Retain'' tag on a scale, the tag can only be removed by a USDA inspector. As long as the tag is on the scale, it shall not be used.

§ 442.4 Testing of scales.

(a) The operator of each official establishment that weighs meat or poultry food products will cause such scales to be tested for accuracy in accordance with the technical requirements of NIST Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and verified by an authorized USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's weights and measures authority or from a State registered or licensed scale repair firm or person, or shall have alternative documented procedures showing that the scale has been tested for accuracy in accordance with the requirements of NIST Handbook 44.

§ 442.5 Handling of failed product.

Any lot of product that is found to be out of compliance with net weight requirements upon testing in accordance with the methods prescribed in § 442.2 of this subchapter shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section in accordance with the requirements of this part.

(b) A lot tested outside an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking will not deface, cover, or destroy any other marking or labeling required under this subchapter, and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

Done in Washington, DC, on August 13, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–20559 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318, 381, and 439

[FSIS Docket No. 03–020F; FDMS Docket No. 2005–0023]

RIN # 0583–AD09

Accredited Laboratory Program

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is revising, editing, and consolidating provisions of the standards and procedures for the accreditation of non-Federal analytical chemistry laboratories. Laboratories in the Accredited Laboratory Program (ALP) are accredited to analyze official meat and poultry samples for (1) specific chemical residues or classes of chemical residues, and (2) moisture, protein, fat, and salt. In particular, FSIS is amending its current regulations regarding the accreditation of non-Federal analytical chemistry laboratories to accommodate the adoption of newer methods for analyzing chemical residues and to correct some data. In addition, FSIS is making editorial changes to its accredited laboratory regulations to reflect Agency reorganizations and program changes and to improve the clarity and consistency of application for all laboratories participating in the ALP. Finally, FSIS is consolidating the accredited laboratory regulations from 9 CFR 318.21 of the meat inspection regulations and 9 CFR 381.153 of the poultry products inspection regulations into a single new part, 9 CFR part 439.

DATES: This rule will be effective October 9, 2008.

FOR FURTHER INFORMATION CONTACT: Eugene Vickers, Chief of the ALP, Office of Public Health Science, FSIS, at (202) 690–6407 or fax (202) 690–6632, or by writing to the ALP, Box 17 Aerospace Center, Room 377, 901 D Street, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2006, FSIS proposed to amend the Federal meat and poultry products inspection regulations by revising, editing, and consolidating provisions of the standards and procedures for the accreditation of non-Federal analytical chemistry laboratories (71 FR 2483).[1] This final rule is consistent with the proposed rule, except for the following technical revisions. First, FSIS had proposed to codify the Internet and mailing addresses for obtaining information on the ALP and minimum proficiency levels. In the final rule, FSIS is not codifying this address information because it is subject to change. However, Internet and mailing addresses for obtaining information are included in this preamble.

In addition, FSIS had also proposed to establish a new § 439.60 that would have consolidated all references to ''violations of law'' contained in §§ 318.21(d)(4), 318.21(f), 318.21(g)(4), 381.153(d)(4), 381.153(f), and 381.153(g)(4)). These regulations prescribe the conditions under which a laboratory will have its accreditation denied, suspended, or revoked. FSIS had proposed to consolidate references to violations of law to eliminate duplicative provisions within the regulations. The Agency did not intend to propose substantive changes to these regulations.

However, when developing this final rule, FSIS determined that, as proposed, § 439.60 did not adequately delineate the circumstances in which the Agency would deny, suspend, or revoke a laboratory's accreditation for reasons associated with certain violations of law. Therefore, instead of consolidating all references to violations of law into new § 439.60 as proposed, this final rule describes the reasons that FSIS will deny, suspend, or revoke a laboratory's accreditation under separate sections that include specific paragraphs that contain provisions for violations of law.

Thus, under this final rule, instead of providing a cross-reference to § 439.60 as proposed, § 439.50(c) describes the conditions under which FSIS will refuse to provide an accreditation to a laboratory for reasons associated with violations of law. In addition, instead of providing a cross-reference to § 439.60 as proposed, § 439.52 of this final rule provides a complete description of the reasons that FSIS will suspend a laboratory's accreditation. Finally, instead of providing a cross-reference to § 439.60 as proposed, § 439.53(c) of this final rule describes the conditions under which FSIS will revoke a laboratory's accreditation for reasons associated with violations of law. This final rule also removes proposed § 439.60, which proposed to consolidate the provisions for violations of law, and re-designates proposed § 439.70, the provisions for notification and hearings, as § 439.60.

[1] FSIS laboratories are not part of the ALP. FSIS laboratories are ISO17025 accredited. The methods that FSIS laboratories use are found on the FSIS Web site.

As discussed in the proposed rulemaking, this rule updates the regulations governing the ALP and clarifies and corrects some data. Issuance of this regulation will give FSIS more flexibility in keeping up with current and future scientific changes without having to reissue new regulations periodically. This rule deletes all references and footnotes to the Association of Official Analytical Chemists (AOAC) official methods contained in the current food chemistry accreditation regulations and the definitions. The AOAC methods will no longer be specifically cited. Instead, the ALP will advise accredited laboratories, as provided in the accreditation regulations, about suitable methods that are available from various compendia, such as FSIS guidebooks or current AOAC manuals.

This rule deletes all references to split samples because they are no longer part of the ALP program. In addition, this rule modifies Table 1 of the current regulations in §§ 318.21 and 381.153 by moving its footnote information into the main body of the table. The rule modifies Table 2 and provisions for Quality Assurance (QA) and Quality Control (QC) recovery throughout the regulations by removing explicit figures for minimum proficiency levels (MPLs) and recoveries. Information on current recoveries established by FSIS for laboratory quality assurance and quality control is available from the ALP Web site at *http://www.fsis.usda.gov/Science/Accredited_Laboratories/index.asp.*

A link to information on current MPLs is available on the ALP Web site or it can be accessed directly at *http://www.fsis.usda.gov/PDF/2003_Red_Book_Appendix3-4.pdf.*

FSIS is also making editorial changes to its accredited laboratory regulations to reflect Agency reorganizations and program changes, and to improve the clarity and consistency of application for all laboratories participating in the ALP.

Finally, this rule eliminates duplicative provisions within the current regulations, and consolidates §§ 318.21 and 381.153 into a single set of regulations in new Part 439. For example, new § 439.20 contains the criteria for maintaining either a food chemistry accreditation or a chemical residue accreditation for both meat and poultry products. A summary of the changes made is contained in the following table:

Meat	Poultry	New	Changes
318.21	381.153	Part 439	Editorial and conforming changes are made throughout the regulations, along with certain other revisions.
318.21(a)	381.153(a)	439.1	Amended to delete specific references to AOAC, to delete the definition of split samples, to modify Tables 1 and 2 to revise performance standards, and to add new definitions and revise certain current definitions.
318.21(b)(1), 318.21(c)(1)	381.153(b)(1), 381.153(c)(1)	439.5	Updated and consolidated application requirements.
318.21(b)(2), 318.21(c)(2)	381.153(b)(2), 381.153(c)(2)	439.10	Revised, consolidated, and clarified accreditation criteria.
318.21(b)(3), 318.21(c)(3)	381.153(b)(3), 381.153(c)(3)	439.20	Revised and consolidated criteria for maintaining accreditation.
318.21(d)	381.153(d)	439.50	Editorial changes.
318.21(e)	381.153(e)	439.51	Updated to cross-reference sections of new § 439.20 and to make certain other revisions.
318.21(f)	381.153(f)	439.52	Editorial changes.
318.21(g)	381.153(g)	439.53	Updates and consolidates bases for revocation of accreditation and makes certain editorial changes.
318.21(h)	381.153(h)	439.60	Editorial changes.

Expansion of the Laboratory Program

Although recent rulemakings and Agency policy decisions address a range of chemical contaminants, including most that present biosecurity concerns, FSIS does not intend to expand the ALP at this time. Expansion of the program to other analytes would require a statistical evaluation of historical data in order to develop the appropriate algorithms and correction factors needed to implement the same type of quality assurance procedures that are applied to the analytes currently included in the program. It would also require FSIS to make policy decisions regarding the acceptance of test results from non-Federal laboratories for these new analytes. The Agency does not intend to include additional analytes (e.g., pesticide or drug residues) by laboratories in the ALP until such policy decisions have been made and the necessary scientific foundation is established for them.

Discussion of Comments

The Agency received a total of five comments in response to the proposed rule, four from consumers and one from a representative of a trade industry association. Two of the comments were supportive, one was both supportive and critical, and two were opposed to the proposed rule.

Comment: The commenter supported no changes to the current rules. The commenter claimed that USDA changes often harm and hurt the public and only help the profiteers.

Response: No evidence was presented by the commenter to show that the proposed changes will have adverse effects on the public. FSIS has carefully evaluated all changes and determined they will improve the ALP.

Comment: The commenter supported the ALP and asked for clarification of the standardized values in classes of residue. The commenter wanted to know if the values are for various species.

Response: The standardized values are for various species. The chlorinated hydrocarbons (CHC) and polychlorinated biphenyls (PCB) are measured in the fat of various species, such as beef, pork, and chicken.

Comment: The commenter stated there is no need for the FSIS ALP. The commenter suggested that FSIS recognize analytical results produced by any laboratory accredited according to International Organization for Standardization (ISO) 17205, which is the ISO laboratory accreditation standard. The commenter would like the resources currently expended on the ALP to be re-directed within FSIS.

Response: The FSIS ALP is a user fee program mandated by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Bill). The user fees cover the cost of administering the ALP program. ISO accreditation is a third party evaluation of laboratory quality and capability. FSIS' ALP is a separate program. While ISO

accreditation requires, but does not provide, proficiency testing, such testing is a cornerstone of the FSIS program. Thus, there are differences in the two programs. The ALP is a voluntary program. Many of the accredited laboratories are ISO accredited, and they choose to be in the FSIS ALP to satisfy their clients' requirements.

Comment: The commenter supported the proposed rule to the extent that it will bring more clarity and consistency to the process of analyzing and obtaining results and increase the rapidity of analytical results. In addition, this commenter stated that private laboratories may well have increased business opportunities, thus possibly reducing government cost. The concern expressed by this commenter was that consumers may question the accuracy of testing by private laboratories as opposed to ''more experienced'' government laboratories. Also, the commenter stated that consumers may be concerned that the meat and poultry industries will pass the increased cost of testing in private laboratories on to the consumers. This same commenter asked if it would be possible to do random sampling to ensure the private labs are consistently meeting Federal standards.

Response: Accredited laboratories are held to the same procedures and standards as FSIS laboratories. The laboratories' analytical performance is continually monitored by proficiency samples and periodic on-site reviews.

Some meat and poultry plants have their own laboratories. Having these laboratories accredited by FSIS will facilitate testing without costing the industry extra money.

Comment: An additional commenter supported the proposal without qualification.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any requirements on federally inspected premises, facilities, and operations that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported products, that are not at such an establishment, after their entry into the United States.

This final rule is not intended to have retroactive effect.

When this final rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Effect on Small Entities

The Administrator has made a determination that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). There are about 77 laboratories that have a total of about 92 accreditations in the FSIS ALP. About three-quarters of these are large entities, based on their volume of business, or are part of entities such as large business corporations, State universities, or State governments. The smaller laboratories participating in the ALP range from medium-sized laboratory facilities to one- or two-person operations. These laboratories provide analytical services of official samples to large and small establishments.

The effects of this rule on the laboratories and on the establishments they serve will not be significant and will apply equally to large and small entities. Participation in the Agency's ALP is voluntary. It is expected that a decision to participate would be based on a calculation of the benefits and costs to the firm, including a determination whether the resulting loss of business as a result of non-participation in ALP would be significant.

The rule does not involve a change in the accreditation fee, but rather adjustments and clarifications in the operational procedures and standards. The cost savings brought about by improved efficiencies in the requirements for participation in the ALP are likely to be small.

Paperwork Requirements

FSIS has reviewed the paperwork and recordkeeping requirements in this rule in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Agency has determined that the paperwork requirements for the regulations that govern the accreditation of non-Federal analytical chemistry laboratories have already been accounted for in the Application for Inspection, Sanitation, and Accredited Laboratories information collection approved by OMB. The OMB approval number for the Application for Inspection, Sanitation, and Accredited Laboratories information collection is 0583–0082.

E-Government Act Compliance

FSIS 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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2008_Interim_&_Final_Rules_Index/index.asp.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives

and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 318

ALP, Meat inspection, Recordkeeping and reporting requirements.

9 CFR Part 381

ALP, Poultry and poultry products inspection, Recordkeeping and reporting requirements.

9 CFR Part 439

Meat inspection, Poultry and poultry products inspection, Laboratory accreditation.

■ Accordingly, Title 9, Chapter III of the Code of Federal Regulations is amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

■ 1. The authority citation for Part 318 would continue to read as follows:

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 318.21 [Removed and Reserved]

■ 2. Remove and reserve § 318.21.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 3. The authority citation for Part 381 would continue to read as follows:

Authority: 7 U.S.C., 138f, 450; 21 U.S.C., 451–470; 7 CFR 2.7, 2.18, 2.53.

§ 381.153 [Removed and Reserved]

■ 4. Remove and reserve § 381.153.

Subchapter E—Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act

■ 5. Subchapter E is amended by adding a new Part 439 to read as follows:

PART 439—ACCREDITATION OF NON-FEDERAL CHEMISTRY LABORATORIES

Sec.

439.1 Definitions.
439.5 Applications for accreditation.
439.10 Criteria for obtaining accreditation.
439.20 Criteria for maintaining accreditation.
439.50 Refusal of accreditation.
439.51 Probation of accreditation.
439.52 Suspension of accreditation.
439.53 Revocation of accreditation.
439.60 Notifications and hearings.

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 439.1 Definitions.

(a) *Accreditation*—Determination by FSIS that a laboratory is qualified to analyze official samples of raw or processed meat and poultry products, because it has met the requirements for accreditation specified in this part, for the presence and amount of all four food chemistry analytes (protein, moisture, fat, and salt); or a determination by FSIS that a laboratory is qualified to analyze official samples of raw or processed meat and poultry products, because it has met the requirements for accreditation in this part, for the presence and amount of a specified chemical residue of any one of several classes of chemical residues. A laboratory may hold more than one accreditation.

(b) *Accredited laboratory*—A non-Federal analytical laboratory that has met the requirements for accreditation specified in this Part and, therefore, at an establishment's discretion, may be used in lieu of an FSIS laboratory for analyzing official regulatory samples. Payment for the analysis of official samples is to be made by the establishment using the accredited laboratory.

(c) *Accredited Laboratory Program (ALP)*—The FSIS program in which non-Federal laboratories are accredited as eligible to perform analyses on official regulatory samples of raw or processed meat and poultry products, and through which a check sample program for quality assurance is conducted.

(d) *Chemical residue misidentification*—see ''Correct chemical residue identification'' definition.

(e) *Coefficient of variation (CV)*—The standard deviation of a distribution of analytical values multiplied by 100 and divided by the mean of those values.

(f) *Comparison mean*—The average result, for a sample, obtained from all submitted results that have a large deviation measure of zero. When only two laboratories perform the analysis and the large deviation measure is not zero, alternative procedures for establishing a comparison mean may be employed by FSIS. For purposes of computing the comparison mean, a laboratory's ''result'' for a food chemistry analyte is the obtained analytical value; a laboratory's ''result'' for a chemical residue is the logarithmic transformation of the obtained analytical value.

(g) *Correct chemical residue identification*—Reporting by a laboratory of the presence and analytical value of a chemical residue that was included in the ALP check sample above the minimum reporting level. Failure of a laboratory to report the presence of such a chemical residue is considered a misidentification. In addition, reporting the presence of and analytical value for a residue that was not included in the ALP check sample above the minimum reporting level is considered a misidentification.

(h) *CUSUM*—A class of statistical procedures for assessing whether or not a process is ''in control.'' Each CUSUM value is constructed by accumulating incremental values obtained from observed results of the process, and then determined to either exceed or fall within acceptable limits for that process. The initial CUSUM values for each laboratory whose application for accreditation is accepted are set at zero. The CUSUM values are reset to zero at the beginning of each year; that is, the CUSUM values associated with the first maintenance check sample each year are set equal to the CUSUM increment for that sample. The four CUSUM procedures are:

(1) Positive systematic laboratory difference CUSUM (CUSUM–P)—monitors how consistently an accredited laboratory gets numerically greater results than the comparison mean;

(2) Negative systematic laboratory difference CUSUM (CUSUM–N)—monitors how consistently an accredited laboratory gets numerically smaller results than the comparison mean;

(3) Variability CUSUM (CUSUM–V)—monitors the average ''total deviation'' (i.e., the combination of the random fluctuations and systematic differences) between an accredited laboratory's results and the comparison mean; and

(4) Individual large deviation CUSUM (CUSUM–D)—monitors the magnitude and frequency of large differences between the results of an accredited laboratory and the comparison mean.

(i) *Food chemistry*—For the purposes of Part 439, ''food chemistry'' will refer to analysis of raw or processed meat or poultry products for the analytes moisture, protein, fat, and salt. All four analytes must be determined when a food chemistry analysis is conducted, unless otherwise advised by the ALP.

(j) *Individual large deviation*—An analytical result that differs from the sample comparison mean by more than would be expected assuming normal laboratory variability.

(k) *Initial accreditation check sample*—A sample provided by the ALP to a non-Federal laboratory to determine whether the laboratory's analytical capability meets the standards for granting accreditation.

(l) *Inter-laboratory accreditation maintenance check sample*—A sample

provided by FSIS to an accredited laboratory to assist in determining whether the laboratory is maintaining acceptable levels of analytical capability.

(m) *Large deviation measure*—A measure that quantifies an unacceptably large difference between a laboratory's analytical result and the sample comparison mean.

(n) *Minimum proficiency level* (MPL)—The minimum concentration of a residue at which an analytical result will be used to assess a laboratory's quantification capability. This concentration is an estimate of the smallest concentration for which the average coefficient of variation (CV) for reproducibility (i.e., combined within and between laboratory variability) does not exceed 20 percent.

(o) *Minimum reporting level* (MRL)—The number such that if any obtained analytical value for a residue in a check sample or official sample equals or exceeds this number, then the residue is reported together with the obtained analytical value.

(p) *Official sample*—A sample selected by an inspector or inspection service employee in accordance with FSIS procedures for regulatory use.

(q) *Probation*—The period commencing with official notification to an accredited laboratory that its check sample results no longer satisfy the performance requirements specified in this rule, and ending with official notification that accreditation either is fully restored, is suspended, or is revoked.

(r) *QA* (See Quality assurance recovery).

(s) *QC* (See Quality control recovery).

(t) *Quality assurance (QA) recovery*—The ratio of a laboratory's analytical value for a check sample residue to the established level of the analyte in the check sample, multiplied by 100. As dictated by the procedures for the analyte, the analytical value may be adjusted prior to the recovery computation.

(u) *Quality control (QC) recovery*—The ratio of a laboratory's analytical value of a quality control standard to the established level of the analyte in the standard, multiplied by 100. As dictated by the procedures for the analyte, the analytical value may be adjusted prior to the recovery computation.

(v) *Refusal of accreditation*—An action taken by FSIS when a laboratory that is applying for accreditation is denied the accreditation.

(w) *Responsibly connected*—Any individual, or entity, that is a partner, officer, director, manager, or owner of 10 percent or more of the voting stock of the applicant or recipient of accreditation or an employee in a managerial or executive capacity or any employee who conducts or supervises the chemical analysis of FSIS official samples.

(x) *Revocation of accreditation*—An action taken by FSIS against a laboratory, removing the laboratory's right to analyze official samples.

(y) *Standardizing constant*—A number that results from a mathematical adjustment to the ''standardizing value'' and is used to compute the standardized difference for a check sample result. The number takes into consideration the expected variance of the difference between the accredited or applying laboratory's result(s) and the comparison mean for a sample, the standardizing value, the correlation and number of repeated results by a laboratory on a sample, and the number of laboratories that analyzed a sample.

(z) *Standardized difference*—The quotient of the difference between a laboratory's result on a sample and the comparison mean of the sample divided by the standardizing constant.

(aa) *Standardizing value*—A number representing the performance standard deviation of an individual result. The number is given, or computed by, the information provided in Tables 1 and 2 to this paragraph (aa).

TABLE 1 TO PARAGRAPH (aa)—STANDARDIZING VALUES FOR FOOD CHEMISTRY

[By product class and analyte]

Product/class	Moisture	Protein [1]	Fat [1]		Salt [1]		
			<12.5%	≥12.5%	<1%	1–4%	≥4% [2]
Cured Pork/Canned Ham	0.50	0.060 ($X^{0.65}$)	0.26 ($X^{0.25}$)	0.30 ($X^{0.25}$)	0.127	0.127 ($X^{0.25}$)	0.22
Ground Beef	0.71	0.060 ($X^{0.65}$)	N/A	0.35 ($X^{0.25}$)	0.127	0.127 ($X^{0.25}$)	0.22
Other Meat Products	0.57	0.060 ($X^{0.65}$)	0.26 ($X^{0.25}$)	0.30 ($X^{0.25}$)	0.127	0.127 ($X^{0.25}$)	0.22
Poultry Products	0.57	0.060 ($X^{0.65}$)	0.26 ($X^{0.25}$)	0.30 ($X^{0.25}$)	0.127	0.127 ($X^{0.25}$)	0.22

[1] The standardizing value is either the value given in the table or is computed by the formula set forth in the table, where X is the comparison mean of the sample. Standardizing values are provided for different percentages of fat and salt as indicated in the table.

[2] For dry salami and pepperoni products.

TABLE 2 TO PARAGRAPH (aa)—STANDARDIZING VALUES FOR CHEMICAL RESIDUES

Class of residues	Standardizing value [3]
Chlorinated Hydrocarbons: [1]	
Aldrin	0.20
Benzene Hexachloride	0.20
Chlordane	0.20
Dieldrin	0.20
DDT	0.20
DDE	0.20
TDE	0.20
Endrin	0.20
Heptachlor	0.20
Heptachlor Epoxide	0.20
Lindane	0.20
Methoxychlor	0.20

TABLE 2 TO PARAGRAPH (aa)—STANDARDIZING VALUES FOR CHEMICAL RESIDUES—Continued

Class of residues	Standardizing value [3]
Toxaphene	0.20
Hexachlorobenzene	0.20
Mirex	0.20
Nonachlor	0.20
Polychlorinated Biphenyls:	0.20
Arsenic [2]	0.25
Sulfonamides [2]	0.25
Volatile Nitrosamine [2]	0.25

[1] Laboratory statistics are computed over all results (excluding PCB results), and for specific chemical residues.

[2] Laboratory statistics are only computed for specific chemical residues.

[3] The standardizing value of all initial accreditation and probationary check samples computations is 0.15.

(bb) *Suspension of accreditation*—Action taken by FSIS against a laboratory that temporarily removes the laboratory's right to analyze official samples. Suspension of accreditation ends when accreditation either is fully restored or is revoked.

(cc) *Systematic laboratory difference*—A comparison of one laboratory's results with the comparison mean for samples that show, on average, a consistent relationship. A laboratory that is reporting, on average, numerically greater results than the comparison mean has a positive systematic laboratory difference.

Conversely, numerically smaller results indicate a negative systematic laboratory difference.

(dd) *Variability*—Random fluctuations in a laboratory's processes that cause its analytical results to deviate from a true value.

(ee) *Variance*—The expected average of the squared differences of sample results from an expected sample mean.

§ 439.5 Applications for accreditation.

(a) Application for accreditation shall be made on designated paper or electronic forms provided by FSIS, or otherwise in writing, by the owner or manager of a non-Federal analytical laboratory. The forms shall be sent to the ALP or may be submitted electronically when so provided for by FSIS. The application shall specify the kinds of accreditation that are wanted by the owner or manager of the laboratory. A laboratory whose accreditation has been refused or revoked may reapply for accreditation after 60 days from the effective date of that action, and must provide written documentation specifying what corrections were made.

(b) At the time that an Application for Accreditation is filed with the ALP, the management of a laboratory shall, for each accreditation sought, submit a check, bank draft, or money order in the amount specified in 9 CFR 391.5, made payable to the U.S. Department of Agriculture, along with the completed application for the accreditation(s). When so provided for by FSIS, electronic transfer of funds may be accepted.

(c) Accreditation will not be granted or continued, without further procedure, for failure to pay the accreditation fee(s). The fee(s) paid will be nonrefundable and will be credited to the account from which the expenses of the laboratory accreditation program are paid.

(d) Annually on the anniversary date of each accreditation, FSIS will issue a bill in the amount specified in 9 CFR 391.5 for each accreditation held. Bills are payable upon receipt by check, bank draft, or money order made payable to the U.S. Department of Agriculture and become delinquent 30 days from the date of the bill.

(e) Accreditation will be terminated without further procedure for having a delinquent account. The fee(s) paid will be nonrefundable and will be credited to the account from which the expenses of the ALP are paid.

§ 439.10 Criteria for obtaining accreditation.

(a) Analytical laboratories may be accredited for the analyses of food chemistry analytes, as defined in § 439.1 of this part, or a specific chemical residue or a class of chemical residues in raw or processed meat and poultry products.

(b) Accreditation will be given only if the applying laboratory successfully satisfies the requirements presented below. For food chemistry accreditation, the requirements must be satisfied for all four analytes.

(c) This accreditation authorizes official FSIS acceptance of the analytical test results provided by these laboratories on official samples.

(d) To obtain FSIS accreditation, an analytical laboratory must:

(1) Be supervised by a person holding, at a minimum, a bachelor's degree in chemistry, food science, food technology, or a related field.

(i) For food chemistry accreditation, the supervisor must also have one year's experience in food chemistry analysis, or equivalent qualifications, as determined by the Administrator.

(ii) For chemical residue accreditation, either the supervisor or the analyst assigned to analyze the sample must also have three years' experience determining analytes at or below part per million levels, or equivalent qualifications, as determined by the Administrator.

(2) Demonstrate an ability to achieve quality assurance levels that are within acceptable limits for systemic laboratory difference, variability, and individual large deviations, in the analyte category for which accreditation is sought, using analytical procedures designated by the FSIS ALP as being acceptable. An applying laboratory will successfully demonstrate these capabilities for:

(i) Food chemistry if its results from a 36 check sample accreditation study each satisfy the criteria presented in paragraph (e) of this section.

(ii) Chemical residues if its analytical results for each specific chemical residue provided in a check sample accreditation study containing a minimum of 14 check samples satisfy the criteria presented in paragraph (e) of this section, including criteria for QA and QC recovery and for residue identification. In addition, if the laboratory is requesting accreditation for the analysis of chlorinated hydrocarbons, all analytical results for the residue class must collectively satisfy the criteria. [Conformance to criteria in paragraph (e) of this section will only be determined when six or more analytical results with associated comparison means at or above the logarithm of the minimum proficiency level are available.]

(3) Round all check sample statistical computations to the nearest tenth, except where otherwise noted.

(4) Complete a second set of the requisite number of check samples if the results of the first set of check samples do not meet the criteria for obtaining accreditation.

(i) The second set of check samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. The second set of food chemistry check samples will be analyzed for only the analyte(s) for which unacceptable initial results had been obtained by the laboratory.

(ii) If the results of the second set of check samples do not meet the criteria for obtaining accreditation, the laboratory may reapply after a 60-day waiting period, commencing from the date of refusal of accreditation by FSIS. At that time, a new application, all fees, and all documentation of corrective action required for accreditation must be submitted.

(5) Allow inspection of the laboratory by FSIS officials prior to the determination of granting accredited status.

(6) Pay the accreditation fee by the date required.

(e) *Quality assurance levels*—(1) *Systematic laboratory difference:* The absolute value of the average standardized difference must not exceed the following:

(i) For food chemistry, 0.73 minus the product of 0.17 and the standard deviation of the standardized differences; and

(ii) For chemical residues, 1.67 (2.00 if there are less than 12 analytical results) minus the product of 0.29 and the standard deviation of the standardized differences.

(2) *Variability:* The estimated standard deviation of the standardized difference must not exceed the following:

(i) For food chemistry, 1.15; and

(ii) For chemical residues, a computed limit that is a function of the number of analytical results used in the computation of the standard deviation, and of the amount of variability.

(3) *Individual large deviations:* One hundred times the average of the large deviation measures of the individual samples must be less than 5.0. A result will have a large deviation measure equal to zero when the absolute value of the result's standardized difference, (d), is less than 2.5 and otherwise a measure equal to 1–(2.5/d).

(4) For residue analyses, the following additional quality assurance requirements must be met.

(i) *QA recovery:* The average of the QA recoveries of the individual check sample analytical results must lie within ranges established by FSIS.

(ii) *QC recovery:* All QC recoveries must lie within ranges established by FSIS. Supporting documentation must be made available to FSIS upon request.

(iii) *Correct identification:* There must be correct identification of all chemical residues in all samples.

§ 439.20 Criteria for maintaining accreditation.

(a) To maintain accreditation, an analytical laboratory must fulfill the requirements of paragraphs (b) through (i) of this section.

(b) *Official samples.*

(1) An accredited laboratory must expeditiously report analytical results, in the analyte category for which accreditation was granted, of official samples on designated forms to the Data Center Staff, USDA/FSIS Eastern Laboratory, Russell Research Center, P.O. Box 6085, Athens, GA 30604 (for U.S. Postal Service delivery), or Data Center Staff, USDA/FSIS Eastern Laboratory, Russell Research Center, 950 College Station Road, Athens, GA 30605 (for commercial carrier delivery). When so provided for by FSIS, analytical results may be reported to the Data Center Staff by facsimile at (706) 546–3589, or electronically. The Federal inspector at any establishment may assign the analysis of official samples to an FSIS laboratory if, in the inspector's judgment, there are delays in receiving test results on official samples from an accredited laboratory.

(2) Every QC recovery associated with reporting of official samples must lie within ranges established by FSIS. Supporting documentation must be made available to FSIS upon request.

(c) *Records.* An accredited laboratory must:

(1) Maintain laboratory quality control records for the most recent three years that samples have been analyzed under this Program.

(2) Maintain complete records of the receipt, analysis, and disposition of official samples for the most recent three years that samples have been analyzed under this Program.

(3) Maintain in a secure electronic format or in a standards book, which is preferably a permanently bound book with sequentially numbered pages, all records, readings, and calculations for standard solutions. All entries are to be dated and signed by the analyst immediately upon completion of the entry, and by the supervisor, or in the absence of the supervisor by the supervisor's designee, before use of the standard solution but no later than within one week. The standards book is to be retained for three years after the last recorded entry.

(4) Maintain records and supervisor approvals of recoveries, and of instrument maintenance and calibration. The records are to be retained for three years after the last recorded entry.

(5) As provided in paragraph (f) of this section, records should be available for review by any duly authorized representative of the Secretary of Agriculture, including ALP personnel or their designees.

(d) *Check samples.*

(1) An accredited laboratory must analyze interlaboratory accreditation maintenance check samples and return the results to FSIS within three weeks of sample receipt. This must be done whenever requested by FSIS and at no cost to FSIS.

(2) Results must be those of the accredited laboratory. Analyses of maintenance check samples shall not be contracted out by the accredited laboratory.

(3) As provided by the requirements in paragraph (h) of this section, a check sample report will be considered complete only if laboratories report all analytes present in the check sample for the analyte category in which accreditation was granted.

(e) *Corporate changes.* The ALP must be informed within 30 days of any change of address or in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity.

(f) *On-site review.* An accredited laboratory must permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records, both hard copy and electronic, during normal business hours, and to copy any records pertaining to the laboratory's participation in the ALP.

(g) *Analytical procedures.* An accredited laboratory must use analytical procedures designated by the FSIS ALP as being acceptable.

(h) *Quality assurance levels.*

(1) An accredited laboratory must demonstrate an ability to maintain quality assurance levels that are within acceptable limits for systematic laboratory difference, variability, and individual large deviations in the analysis of interlaboratory check samples for the analyte category for which accreditation was granted. An accredited laboratory will successfully demonstrate the maintenance of these capabilities if its analytical results from interlaboratory accreditation maintenance check samples satisfy the criteria presented in this paragraph (h). All statistical computations are to be rounded to the nearest tenth, except where otherwise noted.

(2) In addition, a laboratory accredited for a specific chemical residue or a chemical residue class:

(i) Must satisfy criteria presented in this paragraph for chemical residue recoveries and proper identification;

(ii) Must demonstrate the maintenance of its capabilities by reporting its analytical results for each specific chemical residue found above the minimum proficiency level; and

(iii) Must, if accredited for the analysis of chlorinated hydrocarbons, obtain analytical results that collectively satisfy the criteria.

(3) *Systematic laboratory difference:* The standardized difference between the accredited laboratory's result and the comparison mean for each interlaboratory accreditation maintenance check sample is used to determine two CUSUM values, designated as CUSUM–P and CUSUM–N.

(i) When determining compliance with this criterion for all chlorinated hydrocarbon results in a sample collectively, the following statistical procedure must be followed to account for the correlation of analytical results within a sample: The average of the standardized differences of the analytical results within the sample, divided by a constant, is used in place of a single standardized difference to determine the CUSUM–P (or CUSUM–N) value for the sample. The constant is a function of the number of analytical results used to compute the average standardized difference.

(ii) Positive systematic laboratory difference: This value is computed and evaluated as follows:

(A) Determine the CUSUM–P increment for the sample.

(*1*) The CUSUM–P increment for food chemistry, as defined in § 439.1 of this part, is set equal to:

2.0, if the standardized difference is greater than 2.4,

-2.0, if the standardized difference is less than -1.6, or

the standardized difference minus 0.4, if the standardized difference lies between -1.6 and 2.4, inclusive.

(*2*) The CUSUM–P increment for chemical residues is set equal to:

2.0, if the standardized difference is greater than 2.5,

−2.0, if the standardized difference is less than −1.5, or

the standardized difference minus 0.5, if the standardized difference lies between −1.5 and 2.5, inclusive.

(B) Compute the new CUSUM–P value. The new CUSUM–P value is obtained by adding, algebraically, the CUSUM–P increment to the last previously computed CUSUM–P value. If this computation yields a value smaller than 0, the new CUSUM–P value is set equal to 0.

(C) Evaluate the new CUSUM–P value. The new CUSUM–P value must not exceed:

(*1*) 5.2 for food chemistry.

(*2*) 4.8 for chemical residues.

(iii) Negative systematic laboratory difference: This value is computed and evaluated as follows:

(A) Determine the CUSUM–N increment for the sample.

(*1*) The CUSUM–N increment for food chemistry is set equal to:

2.0, if the standardized difference is greater than 1.6,

−2.0, if the standardized difference is less than −2.4, or

the standardized difference plus 0.4, if the standardized difference lies between −2.4 and 1.6, inclusive.

(*2*) The CUSUM–N increment for chemical residues is set equal to:

2.0, if the standardized difference is greater than 1.5,

−2.0, if the standardized difference is less than −2.5, or

the standardized difference plus 0.5, if the standardized difference lies between −2.5 and 1.5, inclusive.

(B) Compute the new CUSUM–N value. The new CUSUM–N value is obtained by subtracting, algebraically, the CUSUM–N increment from the last previously computed CUSUM–N value. If this computation yields a value smaller than 0, the new CUSUM–N value is set equal to 0.

(C) Evaluate the new CUSUM–N value. The new CUSUM–N value must not exceed:

(*1*) 5.2 for food chemistry.

(*2*) 4.8 for chemical residues.

(4) *Variability:* The absolute value of the standardized difference between the accredited laboratory's result and the comparison mean for each interlaboratory accreditation maintenance check sample is used to determine a CUSUM value, designated as CUSUM–V.

(i) When determining compliance with this criterion for all chlorinated hydrocarbon results in a sample collectively, the following statistical procedure must be followed to account for the correlation of analytical results within a sample: The square root of the sum of the within sample variance and the average standardized difference of the sample, divided by a constant, is used in place of the absolute value of the standardized difference to determine the CUSUM–V value for the sample. The constant is a function of the number of analytical results used to compute the average standardized difference.

(ii) The variability value is computed and designated as follows:

(A) Determine the CUSUM–V increment for the sample. The CUSUM increment is set equal to the larger of −0.4 or the absolute value of the standardized difference minus 0.9. If this computation yields a value larger than 1.6, the increment is set equal to 1.6.

(B) Compute the new CUSUM–V value. The new CUSUM–V value is obtained by adding, algebraically, the CUSUM–V increment to the last previously computed CUSUM–V value. If this computation yields a value less than 0, the new CUSUM–V value is set equal to 0.

(C) Evaluate the new CUSUM–V value. The new CUSUM–V value must not exceed 4.3.

(5) *Large deviations:* The large deviation measure of the accredited laboratory's result for each interlaboratory accreditation maintenance check sample is used to determine a CUSUM value, designated as CUSUM–D.

(i) A result will have a large deviation measure equal to zero when the absolute value of the result's standardized difference, (d), is less than 2.5, and otherwise a measure equal to 1 − (2.5/d).

(ii) The large deviation value is computed and evaluated as follows:

(A) Determine the CUSUM–D increment for the sample. The CUSUM increment is set equal to the value of the large deviation measure minus 0.025.

(B) Compute the new CUSUM–D value. The new CUSUM–D value is obtained by adding, algebraically, the CUSUM–D increment to the last previously computed CUSUM–D value. If this computation yields a value less than 0, the new CUSUM–D value is set equal to 0.

(C) Evaluate the new CUSUM–D value. The new CUSUM–D value must not exceed 1.0.

(6) For chemical residues:

(i) Each QC recovery must lie within ranges established by FSIS.

Supporting documentation must be made available to FSIS upon request.

(ii) Not more than one residue misidentification may be made in any two consecutive check samples.

(iii) Not more than two residue misidentifications may be made in any eight consecutive check samples.

(i) *Fees.* An accredited laboratory must pay the required accreditation fee when it is due.

(j) *Probation.* An accredited laboratory must meet the following requirements if placed on probation pursuant to § 439.51 of this part:

(1) Send all official samples that have not been analyzed as of the date of written notification of probation to a specified FSIS laboratory by certified mail or private carrier or, as an alternative and as directed by FSIS, to a laboratory accredited by FSIS for the designated analyte(s). Mailing expenses will be paid by FSIS.

(2) Analyze a set of check samples similar to those used for initial accreditation, and submit the analytical results to FSIS within three weeks of receipt of the samples.

(3) Satisfy criteria for accreditation check samples specified in § 439.10 of this part.

§ 439.50 Refusal of accreditation.

Upon a determination by the Administrator, a laboratory will be refused accreditation for the following reasons:

(a) A laboratory will be refused accreditation for failure to meet the requirements of § 439.5 or § 439.10 of this part.

(b) A laboratory will be refused subsequent accreditation for failure to return to an FSIS laboratory, by certified mail or private carrier, or, as an alternative and as directed by FSIS, to a laboratory accredited by FSIS for the designated analytes, all official samples that have not been analyzed as of the notification of a loss of accreditation.

(c) A laboratory will be refused accreditation if the laboratory or any individual or entity responsibly connected with the laboratory has been convicted of, or is under indictment for, or has charges on an information brought against them in a Federal or State court concerning any of the following violations of law:

(1) Any felony.

(2) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(3) Any misdemeanor based upon a false statement to any governmental agency.

(4) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

§ 439.51 Probation of accreditation.

Upon a determination by the Administrator, a laboratory will be placed on probation for the following reasons:

(a) If the laboratory fails to complete more than one interlaboratory accreditation maintenance check sample analysis as required by § 439.20(d) of this part within 12 consecutive months, unless written permission is granted by the Administrator.

(b) If the laboratory fails to meet any of the criteria set forth in §§ 439.20(d) and 439.20(h) of this part.

§ 439.52 Suspension of accreditation.

The accreditation of a laboratory will be suspended if the laboratory or any individual or entity responsibly connected with the laboratory is indicted or has charges on information brought against them in a Federal or State court for any of the following violations of law:

(a) Any felony.

(b) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(c) Any misdemeanor based upon a false statement to any governmental agency.

(d) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

§ 439.53 Revocation of accreditation.

The accreditation of a laboratory will be revoked for the following reasons:

(a) An accredited laboratory that is accredited to perform analysis under §§ 439.5, 439.10 and 439.20 of this part will have its accreditation revoked for failure to meet any of the requirements of § 439.20 of this part, except for the following circumstances. If the accredited laboratory fails to meet any of the criteria set forth in §§ 439.20(d) and 439.20(h) of this part and it has not failed during the 12 months preceding its failure to meet the criteria, it shall be placed on probation, but if it has failed at any time during those 12 months, its accreditation will be revoked.

(b) An accredited laboratory will have its accreditation revoked if the Administrator determines that the laboratory or any responsibly connected individual or any agent or employee has:

(1) Altered any official sample or analytical finding; or

(2) Substituted any analytical result from any other laboratory and represented the result as its own.

(c) An accredited laboratory will have its accreditation revoked if the laboratory or any individual or entity responsibly connected with the laboratory is convicted in a Federal or State court of any of the following violations of law:

(a) Any felony.

(b) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(c) Any misdemeanor based upon a false statement to any governmental agency.

(d) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

§ 439.60 Notification and hearings.

Accreditation of any laboratory will be refused, suspended, or revoked under the conditions previously described in this Part 439. The owner or operator of the laboratory will be sent written notice of the refusal, suspension, or revocation of accreditation by the Administrator. In such cases, the laboratory owner or operator will be provided an opportunity to present, within 30 days of the date of the notification, a statement challenging the merits or validity of such action and to request an oral hearing with respect to the denial, suspension, or revocation decision. An oral hearing will be granted if there is any dispute of material fact joined in such responsive statement. The proceeding will be conducted thereafter in accordance with the applicable rules of practice, which will be adopted for the proceeding. Any such refusal, suspension, or revocation will be effective upon the receipt by the laboratory of the notification and will continue in effect until final determination of the matter by the Administrator.

Done in Washington, DC, on August 27, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–20582 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD; Amendment 39–15665; AD 2008–18–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211 Trent 500, 700, and 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

> This action is necessary following the discovery of IP Compressor Rotor rear balance land cracking on an in-service Trent 800 engine. Stress analysis of the damaged rotor has shown a possible threat to the rotor integrity, the cracking therefore presents a potential unsafe condition.

We are issuing this AD to detect cracking on the intermediate pressure (IP) compressor rotor rear balance land. IP compressor rotor rear balance land cracking can lead to uncontained failure of the rotor and damage to the airplane.

DATES: This AD becomes effective October 14, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 14, 2008.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would

apply to the specified products. That NPRM was published in the **Federal Register** on October 15, 2007 (72 FR 58267). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

This Airworthiness Directive requires inspections for cracks in the rear balance land of the IP Compressor Rotor. The inspections comprise an on-wing one-off inspection by borescope for RR Trent 800 engines which must be completed within a short timescale, and in-shop inspections to be completed at each opportunity for RR Trent 500, 700 and 800 engines (the in-shop inspection may be carried out in lieu of the on-wing inspection for the Trent 800 engines if it is accomplished within the timescale applicable to the on-wing inspection). This action is necessary following the discovery of IP Compressor Rotor rear balance land cracking on an in-service Trent 800 engine. Stress analysis of the damaged rotor has shown a possible threat to the rotor integrity, the cracking therefore presents a potential unsafe condition. The cause of the cracking is currently not fully understood but evidence suggests it relates to an unusual balance weight condition.

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

Comments

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

Editorial Addition of a New Revision to Alert Service Bulletin RB.211–72–AF260

We received Alert Service Bulletin RB.211–72–AF260, Revision 2, dated July 4, 2007, after we issued the NPRM. We reviewed Revision 2 and determined that no changes to the NPRM were necessary. We updated the revision number from Revision 1 to Revision 2 in this AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect about 110 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3.5 work-hours per engine to perform the proposed actions and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $30,800. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–18–08 Rolls-Royce plc: Amendment 39–15665. Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 560–61, 560A2–61, 768–60, 772–60, 772B–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. These engines are installed on, but not limited to, Airbus A330, A340–500, A340–600, and Boeing 777 series airplanes.

Reason

(d) This action is necessary following the discovery of IP Compressor Rotor rear balance land cracking on an in-service Trent 800 engine. Stress analysis of the damaged rotor has shown a possible threat to the rotor integrity, the cracking therefore presents a potential unsafe condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

We are issuing this AD to detect cracking on the intermediate pressure (IP) compressor rotor rear balance land. IP compressor rotor rear balance land cracking can lead to uncontained failure of the rotor and damage to the airplane.

Actions and Compliance

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

Inspection—On-Wing

(1) Applicable to RR Trent 800 engines not previously inspected per Rolls-Royce RB211 Propulsion System Alert Non Modification Service Bulletin RB.211–72–AF260, Revision 2, dated July 4, 2007; or earlier issue: Within 400 flight cycles of the Effective Date of this AD inspect the IP Compressor rotor rear

balance land for cracks in accordance with Rolls-Royce RB211 Propulsion System Alert Non Modification Service Bulletin RB.211–72–AF313, dated February 22, 2007 section 3 Accomplishment Instructions. Engines on which cracking is found should be rejected from service.

Inspection—In-Shop

(2) Applicable to RR Trent 500, 700 and 800 engines at each shop visit in which the engine is sufficiently disassembled to access the IP Compressor Module rear face: Inspect the IP Compressor rotor rear balance land for cracks in accordance with Rolls-Royce RB211 Propulsion System Alert Non Modification Service Bulletin RB.211–72–AF260, Revision 2, dated July 4, 2007; or earlier issue section 3 Accomplishment Instructions.

Other FAA AD Provisions

(f) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to EASA Airworthiness Directive 2007–0052, dated February 23, 2007, for related information.

(h) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

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

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

(2) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 44 (0) 1332–242424; fax: 44 (0) 1332–249936.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Alert Service Bulletin No.	Page	Revision	Date
RB.211–72–AF260; Total pages—11	ALL	Original	October 17, 2006.
RB.211–72–AF260; Total pages—11	ALL	1	January 17, 2007.
RB.211–72–AF260; Total pages—11	ALL	2	July 4, 2007.
RB.211–72–AF313; Total pages—11	ALL	Original	February 22, 2007.

Issued in Burlington, Massachusetts, on August 25, 2008.

Mark A. Rumizen,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–20212 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0946; Directorate Identifier 2008–NM–147–AD; Amendment 39–15667; AD 2008–18–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–90–30 airplanes. This AD requires a detailed inspection for certain defects of the upper fasteners of the aft mount support fitting of the left and right engines and corrective actions if necessary. This AD results from reports of loose, cracked, or missing fasteners in the aft mount support fitting of the left and right engines. We are issuing this AD to detect and correct loose, cracked, or missing fasteners in the engine aft support mount fitting, which could lead to separation of the support fitting from the pylon, which could result in separation of the engine from the airplane.

DATES: This AD is effective September 24, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 24, 2008.

We must receive comments on this AD by November 10, 2008.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports of loose, cracked, or missing fasteners in the aft mount support fitting of the left and right engines on several McDonnell Douglas Model MD–90–30 airplanes. The airplanes had accumulated between 18,767 and 25,400 total flight hours and between 15,841 and 27,000 total flight cycles. A safety assessment of the missing fasteners has concluded that loose or discrepant fasteners in the top

horizontal row, common with the pylon skin, significantly decrease the margin of safety of the aft mount support installation at the design limit load. Loose, cracked, or missing fasteners in the engine aft mount support fitting could lead to separation of the support fitting from the pylon. This condition, if not corrected, could result in separation of the engine from the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin MD90–54A002, dated August 1, 2008. The service bulletin describes procedures for doing a detailed inspection for certain defects of the upper fasteners of the aft mount support fitting of the left and right engines, and corrective action as applicable. The detailed inspection consists of the following actions: (1) A general visual inspection of the upper fasteners for any missing, loose, or damaged fasteners, (2) a gap check between the washers and structure or between the fastener heads and structure, if applicable, and (3) a torque check of the fastener nuts, if applicable. The corrective action includes replacing all fasteners if any defect is found.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This AD requires accomplishing the actions specified in the service information described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time we might consider further rulemaking.

FAA's Justification and Determination of the Effective Date

Loose, cracked, or missing fasteners in the engine aft mount support fitting could lead to separation of the support fitting from the pylon, possibly resulting in separation of the engine from the airplane. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure structural integrity of the engine aft mount support fitting and the short compliance time involved with this action, this AD must be issued immediately.

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0946; Directorate Identifier 2008–NM–147–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–18–10 McDonnell Douglas: Amendment 39–15667. Docket No. FAA–2008–0946; Directorate Identifier 2008–NM–147–AD.

Effective Date

(a) This airworthiness directive (AD) is effective September 24, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–90–30 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin MD90–54A002, dated August 1, 2008.

Unsafe Condition

(d) This AD results from reports of loose, cracked, or missing fasteners in the aft mount support fitting of the left and right engines. We are issuing this AD to detect and correct loose, cracked, or missing fasteners in the engine aft support mount fitting, which could lead to separation of the support fitting from the pylon, which could result in separation of the engine from the airplane.

Compliance

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

Detailed Inspection

(f) Within 703 flight cycles after the effective date of this AD, do a detailed

inspection for any defect (missing, loose, or damaged fasteners; incorrect gap between washers and structure or between fastener heads and structure; or incorrect torque of fastener nuts) of the upper fasteners of the aft mount support fitting of the left and right engines, and do all the applicable corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–54A002, dated August 1, 2008.

Credit for Actions Done per Multiple Operator Message (MOM)

(g) Actions done before the effective date of this AD in accordance with Boeing MOM 1–893882781–2, dated July 25, 2008, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Certification Office (ACO), FAA, ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin MD90–54A002, dated August 1, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–20494 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0955; Directorate Identifier 2008–CE–040–AD; Amendment 39–15668; AD 2008–19–01]

RIN 2120–AA64

Airworthiness Directives; Harco Labs, Inc. Pitot/AOA Probes (Part Numbers 100435–39, 100435–39–001, 100435–40, and 100435–40–001)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Harco Labs, Inc. part numbers 100435–39, 100435–39–001, 100435–40, and 100435–40–001 pitot/angle of attack (AOA) probes installed on, but not limited to Eclipse Aviation Inc. Model EA500 airplanes. This AD requires you to incorporate information into the Limitations section of the airplane flight manual (AFM) that will allow operation only under day visual flight rules (VFR) and allow only a VFR flight plan. This AD also requires you to test the pitot/AOA probes for heater performance and replace the pitot/AOA probe if it fails the heater performance test. This AD results from several reports of airspeed disagree caution indication due to blockage from freezing condensation within the pitot/AOA system. We are issuing this AD to detect and correct improperly performing pitot/AOA probe heaters, which could result in blockage within the pitot/AOA system from condensation freezing with consequent incorrect indication of impact air pressure (airspeed/AOA). This blockage could lead to the stall warning becoming unreliable and the stick pusher, overspeed warning, autopilot, and yaw damper to malfunction.

DATES: This AD becomes effective on September 29, 2008.

On September 29, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by November 10, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD.

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

To get the service information identified in this AD, contact Harco Labs, Inc. 186 Cedar Street, Branford, Connecticut 06405; telephone: (203) 483–3700; fax: (203) 483–3701, and Eclipse Aviation, 2503 Clark Carr Loop SE, Albuquerque, New Mexico 87106; telephone: (505) 245–7555; fax: (505) 241–8802.

To view the comments to this AD, go to *http://www.regulations.gov*. The docket number is FAA–2008–0955; Directorate Identifier 2008–CE–040–AD.

FOR FURTHER INFORMATION CONTACT: Solomon Hecht, Aerospace Engineer, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7159; fax: (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

We received several reports of airspeed disagree caution indication due to blockage within the pitot/AOA system from freezing condensation. We are issuing this AD to detect and correct improperly performing pitot/AOA probe heaters.

This condition, if not corrected, could result in a blockage within the pitot/AOA system from condensation freezing with consequent incorrect indication of impact air pressure (airspeed/AOA). This blockage could lead to the stall warning becoming unreliable and the stick pusher, overspeed warning, autopilot, and yaw damper to malfunction.

Relevant Service Information

We reviewed Harco Labs, Inc. Service Bulletin SB–34–10–10–001, Revision F, dated August 19, 2008; Harco Pitot AOA Probe Internal Tubing Heater Verification Test Procedure No. P1149, Rev: E, referenced in 8. Appendix A of Harco Labs, Inc. Service Bulletin SB–

34–10–10–001, Revision F, dated August 19, 2008; and Eclipse Aviation Alert Service Bulletin SB 500–34–019, Rev C, dated August 20, 2008. The service information describes procedures for verification of the internal tube (wedge) heater performance on pitot/AOA probes.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to incorporate information into the Limitations section of the airplane flight manual (AFM) that will allow operation only under day visual flight rules (VFR) and allow only a VFR flight plan. This AD also requires you to test the pitot/AOA probes for heater performance and replace the pitot/AOA probe if it fails the heater performance test.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the potential for the stall warning to become unreliable and the stick pusher, overspeed warning, autopilot, and yaw damper to malfunction due to blockage from condensation freezing in the pitot/AOA system compromises the continued operational safety of the airplanes. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2008–0955; Directorate Identifier 2008–CE–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2008–19–01 Harco Labs, Inc.: Amendment 39–15668; Docket No. FAA–2008–0955; Directorate Identifier 2008–CE–040–AD.

Effective Date

(a) This AD becomes effective on September 29, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Harco Labs, Inc. pitot/angle of attack (AOA) probe part numbers (P/Ns) 100435–39, 100435–39–001, 100435–40, and 100435–40–001; serial numbers 740000 through 799999; that are installed on, but not limited to Eclipse Aviation Company Model EA500 airplanes, certificated in any category, with:

(1) A serial number in the range of 000001 through 000189 where the affected probe was installed at manufacture; or

(2) Any serial number where an affected probe was installed in the field.

Unsafe Condition

(d) This AD is the result of several reports of airspeed disagree caution indication due to blockage within the pitot/AOA system from freezing condensation. We are issuing this AD to detect and correct improperly performing pitot/AOA probe heaters, which could result in blockage within the pitot/AOA system from condensation freezing with consequent incorrect indication of impact air pressure (airspeed/AOA). This blockage could lead to the stall warning becoming unreliable and the stick pusher, overspeed warning, autopilot, and yaw damper to malfunction.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Do a logbook check of the maintenance records to determine if any pitot/AOA probe (P/Ns 100435–39, 100435–39–001, 100435–40, or 100435–40–001) with any affected serial number is installed. If, as a result of this check, you positively identify that all (P/Ns 100435–39, 100435–39–001, 100435–40, or 100435–40–001) pitot/AOA probes installed do not have a serial number affected by this AD, then no further action is required.	Before further flight after September 29, 2008 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the logbook check. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) If you find, as a result of the check required by paragraph (e)(1) of this AD any pitot/AOA probe with an affected serial number is installed or you cannot positively identify the serial number of any pitot/AOA probe installed, incorporate the following text into the Limitations section of the airplane flight manual (AFM): (i) "Operate Only under Day Visual Flight Rules (VFR)"; and (ii) "File Only a VFR Flight Plan."	Before further flight after September 29, 2008 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the AFM as specified in paragraph (e)(2) of this AD. You may insert a copy of this AD into the Limitations section of the AFM to comply with this action. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) If you find any pitot/AOA probe with an affected serial number is installed or you cannot positively identify the serial number of any pitot/AOA probe installed, test the pitot/AOA probe heater performance. Completion of the test with all pitot/AOA probes passing terminates the AFM operational limitations required in paragraph (e)(2) of this AD.	Within the next 90 days after September 29, 2008 (the effective date of this AD).	(i) For all probes installed in Eclipse Model EA500 airplanes, use Eclipse Aviation Alert Service Bulletin SB 500–34–019, Rev C, dated August 20, 2008; and (ii) For all probes, use Harco Labs, Inc. Service Bulletin SB–34–10–10–001, Revision F, dated August 19, 2008, and Harco Pitot AOA Probe Internal Tubing Heater Verification Test Procedure No. P1149, Rev: E, also referenced in 8. Appendix A of Harco Labs, Inc. Service Bulletin SB–34–10–10–001 Revision F, dated August 19, 2008.
(4) If any pitot/AOA probe fails the test procedure specified in paragraph (e)(3) of this AD, replace it with a pitot/AOA probe under the following situations: (i) the replacement pitot/AOA probe serial number is not affected by this AD; (ii) the replacement pitot/AOA probe successfully passes the test procedure in paragraph (e)(3) of this AD; or (iii) the replacement pitot/AOA probe fails the test or is not tested and you: (A) comply with paragraph (e)(2) of this AD; and (B) within the next 90 days after September 29, 2008, install a pitot/AOA probe that meets the criteria of paragraph (e)(4)(i) or (e)(4)(ii) of this AD.	Within the next 90 days after September 29, 2008 (the effective date of this AD).	Replace following Eclipse Aviation Alert Service Bulletin SB 500–34–019, Rev C, dated August 20, 2008, or following an FAA-approved repair procedure (e.g. the FAA-approved aircraft maintenance manual), as applicable.
(5) Do not install any P/N 100435–39, 100435–39–001, 100435–40, or 100435–40–001 pitot/AOA probe unless the criteria of paragraph (e)(4)(i), (e)(4)(ii), or (e)(4)(iii) of this AD are met.	As of September 29, 2008 (the effective date of this AD).	Not applicable.
(6) Remove the operating limitations specified in paragraph (e)(2) of this AD from the Limitations section of the AFM.	Before further flight after completion of the test in paragraph (e)(3) of this AD with all pitot/AOA probes passing or replacement of all failed pitot/AOA probes with: (i) pitot/AOA probes having serial numbers not affected by this AD; or (ii) pitot/AOA probes successfully passing the test following paragraph (e)(3) of this AD.	Not applicable.

(f) If you are required to accomplish paragraph (e)(3) of this AD, previously tested the pitot/AOA probe using Harco Labs, Inc. Service Bulletin SB–34–10–10–001, Revision E or earlier, and have a copy of the Pitot AOA Probe Internal Tubing Heater Verification

Test Procedure Data Sheet for the probe being tested, you may use that data to accomplish procedure 3.1 Lines 1 through 14 or procedure 3.2 Lines 1 though 14, of Harco Pitot AOA Probe Internal Tubing Heater Verification Test Procedure No. P1149, Rev: E, also referenced in 8. Appendix A of Harco Labs, Inc. Service Bulletin SB–34–10–10–001 Revision F, dated August 20, 2008.

Special Flight Permit

(g) Under 14 CFR 39.23, we are limiting the special flight permits for this AD by requiring you to follow the limitations in paragraph (e)(2) of this AD (''Operate Only under Day Visual Flight Rules (VFR)'' and ''File Only a VFR Flight Plan'').

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Solomon Hecht, Aerospace Engineer, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7159; fax: (781) 238–7170. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(i) You must use Harco Labs, Inc. Service Bulletin SB–34–10–10–001, Revision F, dated August 19, 2008; Harco Pitot AOA Probe Internal Tubing Heater Verification Test Procedure No. P1149 Rev: E also referenced in 8. Appendix A of Harco Labs, Inc. Service Bulletin SB–34–10–10–001, Revision F, dated August 19, 2008; and Eclipse Aviation Alert Service Bulletin SB 500–34–019, Rev C, dated August 20, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Harco Labs, Inc. 186 Cedar Street, Branford, Connecticut 06405; telephone: (203) 483–3700; fax: (203) 483–3701 and Eclipse Aviation, 2503 Clark Carr Loop SE, Albuquerque, New Mexico 87106; telephone: (505) 245–7555; fax: (505) 241–8802.

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

Issued in Kansas City, Missouri, on August 29, 2008.

Brian A. Yanez,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–20702 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29036; Airspace Docket No. 07–ANM–13]

Establish Class E Airspace; Point Roberts, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Point Roberts, WA. Additional controlled airspace is necessary to support flight operations at Abbotsford Airport, BC. The FAA is taking this action to improve the safety and management of Instrument Flight Rules (IFR) operations at the request of the Canadian Government.

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

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On February 7, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Point Roberts, WA (73 FR 7228). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Point Roberts, WA. Additional controlled airspace is necessary to support IFR operations at Abbotsford Airport, BC.

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 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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Point Roberts, WA.

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 14 CFR 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 the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 1,200 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Point Roberts, WA (Abbotsford, BC) [New]

Abbotsford Airport, BC, Canada
(Lat. 49°01′31″ N., long. 122°21′48″ W.)

That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 49°00′00″ N., long. 122°15′00″ W.; thence east along the Canadian U.S. Border to lat. 49°00′00″ N., long. 121°20′15″ W.; thence south to lat. 48°51′40″ N., long. 121°20′15″ W.; thence west to lat. 48°51′40″ N., long. 122°15′00″ W.; thence back to the point of origination.

* * * * *

Issued in Seattle, Washington, on August 27, 2008.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–20663 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0419; Airspace Docket No. 08–ANM–3]

Establishment of Low Altitude Area Navigation Route (T-Route); Southwest Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a low altitude Area Navigation (RNAV) route, designated T–276. The NPRM incorrectly indicated the route location in Southwest Oregon, however the route is in Southwest Washington. T-routes are low altitude Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having instrument flight rules (IFR) approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The FAA is taking this action to reduce controller workload, enhance safety and improve the efficient use of the navigable airspace into and through the Portland, Oregon, terminal area.

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

FOR FURTHER INFORMATION CONTACT: Ken McElroy, 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 April 29, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish a low altitude T-route in southwest Oregon (73 FR 23136). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. Three comments were received in response to the NPRM. One comment pointed out the route is located in Southwest Washington and not in Southwest Oregon. The FAA is making the correction. Two comments expressed concern with upslope icing in the area of T–276 and recommended additional training and information be made available to both pilots and controllers concerning the danger of upslope icing in the vicinity of the new airway. In conjunction with the Aircraft Owners and Pilots Association (AOPA) and the Oregon Pilots Association (OPA) articles addressing upslope icing will be published in upcoming issues of the OPA Magazine Propwash in August, and in the September issue of the AOPA magazine. Additionally, an FAA representative will conduct a briefing on upslope icing at the annual OPA meeting scheduled for August 23, 2008.

Low altitude RNAV routes are published in paragraph 6011 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 low altitude RNAV routes listed in this document will be published subsequently in the Order.

The Rule

This action amends to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing a low altitude RNAV route in southwest Washington. The route is designated T–276, and will be depicted on the appropriate IFR En Route Low Altitude charts. T-routes are low altitude RNAV ATS routes, similar to Very High Frequency Omnidirectional Range Federal airways, but based on GNSS navigation. RNAV equipped aircraft capable of filing flight plan equipment suffix ''G'' may file for these routes.

The T-route described in this rule will enhance safety, and facilitate more flexible and efficient use of the navigable airspace for en route IFR operations transitioning through mountainous terrain of southwest Washington.

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 establishes an RNAV T-route in southwest Washington.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b, and 311k. 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 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 FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6011 Contiguous United States Area Navigation Routes.

* * * * *

T–276 COUGA, WA to CARBY, WA [New]

COUGA WP (lat. 46°05′31″ N., long. 122°40′39″ W.)
CARBY WP (lat. 45°44′06″ N., long. 121°55′32″ W.)

* * * * *

Issued in Washington, DC, on August 27, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–20660 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 7, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, 36, and 74

MSHA Approval and Certification Center Address Change

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule, technical amendment.

SUMMARY: MSHA is amending its regulations to update the mailing address of the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center (Center) in Triadelphia, West Virginia. The address of the Center has changed since publication of the regulations.

DATES: *Effective Date:* September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441 (telefax). This document is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION: The U.S. Postal Service has changed the mailing address for MSHA's Technical Support Approval and Certification Center. The new mailing address is: U.S. Department of Labor, Mine Safety and Health Administration, 765 Technology Drive, Triadelphia, WV 26059. This change was required by the Center's local fire and rescue squad so that 911 emergency personnel can identify locations accurately in case of an emergency. Accordingly, the regulations in 30 CFR 6.30(a), 7.3(a), 7.10(c)(1), 7.304(g)(2)(ii), 15.4(a), 18.3, 18.6(a)(3)(i), 18.6(a)(4), 18.80(a), 18.81(a), 18.82(a), 18.82(c), 19.3(a), 19.4(a), 19.13(a)(1), 20.3(a), 20.5(a), 20.14(a)(1), 22.4(a), 22.5(a), 22.11(a)(1), 22.3(a), 23.5(a), 23.14(a)(1), 27.3, 27.4(a)(1), 28.10(c), 28.31(b), 28.40(d), 33.3, 33.6(a)(1), 35.3, 35.6(a)(1), 35.6(g), 36.3, 36.6(a)(1), and 74.6(a) are amended to reflect the new mailing address. This action is being taken for accuracy and to improve emergency response capability. This technical amendment does not meet the definition of ''rule'' in 5 U.S.C. 551(4). Therefore, it is not subject to the rule making requirements in 5 U.S.C. 553. This action also does not constitute a ''regulatory action'' subject to Executive Order 12866, as amended.

List of Subjects in 30 CFR Parts 6, 7, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, 36, and 74.

Mine safety and health.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

■ Accordingly, under the authority of 30 U.S.C. 957, chapter I of title 30, Code of Federal Regulations is amended as follows:

PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON-MSHA PRODUCT SAFETY STANDARDS

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

Authority: 30 U.S.C. 957.

■ 2. Section 6.30 is amended by revising the third sentence of paragraph (a) to read as follows:

§ 6.30 MSHA listing of equivalent non-MSHA product safety standards.

* * * * *

(a) * * * The IEC standards may be inspected at the U.S. Department of Labor, Mine Safety and Health Administration, Electrical Safety Division, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, and may be purchased from International Electrical Commission, Central Office 3, rue de Varembé, P.O. Box 131, CH–1211 GENEVA 20, Switzerland.

* * * * *

PART 7—TESTING BY APPLICANT OR THIRD PARTY

■ 3. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

■ 4. Section 7.3 is amended by revising paragraph (a) to read as follows:

§ 7.3 Application procedures and requirements.

(a) *Application.* Requests for an approval or extension of approval shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

■ 5. Section 7.10 is amended by revising the third sentence of paragraph (c)(1) introductory text to read as follows:

§ 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

* * * * *

(c) * * *

(1) * * * The IEC standards may be inspected at the U.S. Department of Labor, Mine Safety and Health Administration, Electrical Safety Division, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 6. Section 7.304 is amended by revising the fourth sentence of paragraph (g)(2)(ii) to read as follows:

§ 7.304 Technical requirements.

* * * * *

(g) * * *

(2) * * *

(i) * * *

(ii) * * * Copies may be inspected at the U.S. Department of Labor, Mine Safety and Health Administration,

Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, or at the National Archives and Records Administration (NARA). * * *

* * * * *

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

■ 7. The authority citation for part 15 continues to read as follows:

Authority: 30 U.S.C. 957.

■ 8. Section 15.4 is amended by revising paragraph (a) to read as follows:

§ 15.4 Application procedures and requirements.

(a) *Application.* Requests for an approval or an extension of approval under this part shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 9. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 10. Section 18.3 is amended by revising the first sentence to read as follows:

§ 18.3 Consultation.

By appointment, applicants or their representatives may visit the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, to discuss a proposed design to be submitted for approval, certification, or acceptance for listing. * * *

■ 11. Section 18.6 is amended by revising the third sentence of paragraph (a)(3)(i) and paragraph (a)(4) to read as follows:

§ 18.6 Applications.

(a) * * *

(3) * * *

(i) * * * The IEC standards may be inspected at the U.S. Department of Labor, Mine Safety and Health Administration, Electrical Safety Division, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, or at the National Archives and Records Administration (NARA). * * *

* * * * *

(4) The application, all related documents, and all correspondence concerning it shall be addressed to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

■ 12. Section 18.80 is amended by revising paragraph (e) to read as follows:

§ 18.80 Approval of machines assembled with certified or explosion-proof components.

* * * * *

(e) Approvals are issued only by the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

■ 13. Section 18.81 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 18.81 Field modification of approved (permissible) equipment; application for approval of modification; approval of plans for modification before modification.

(a) * * * The application, together with the plans of modifications, shall be filed with the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

■ 14. Section 18.82 is amended by revising the second sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 18.82 Permit to use experimental electric face equipment in a gassy mine or tunnel.

(a) * * * The user shall submit a written application to the Assistant Secretary of Labor for Mine Safety and Health, 1100 Wilson Blvd., Room 2322, Arlington, Virginia 22209–3939, and send a copy to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

(c) * * * Unless equipment is delivered to MSHA for investigation, the applicant shall notify the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, when and where the experimental equipment will be ready for inspection by a representative of MSHA before installing it on a trial basis. * * *

* * * * *

PART 19—ELECTRIC CAP LAMPS

■ 15. The authority citation for part 19 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 16. Section 19.3 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 19.3 Application procedures and requirements.

(a) * * * This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation. * * *

* * * * *

■ 17. Section 19.4 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 19.4 Conditions governing investigations.

(a) * * * This material should be sent prepaid to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

■ 18. Section 19.13 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 19.13 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. * * *

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

■ 19. The authority citation for part 20 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 20. Section 20.3 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 20.3 Application procedures and requirements.

(a) * * * This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, together with the required

drawings, one complete lamp, and instructions for its operation. * * *

* * * * *

■ 21. Section 20.5 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 20.5 Conditions governing investigations.

(a) * * * This material should be sent prepaid to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

■ 22. Section 20.14 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 20.14 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. * * *

* * * * *

PART 22—PORTABLE METHANE DETECTORS

■ 23. The authority citation for part 22 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 24. Section 22.4 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 22.4 Application procedures and requirements.

(a) * * * This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation. * * *

* * * * *

■ 25. Section 22.5 is amended by revising paragraph (a) to read as follows:

§ 22.5 Conditions governing investigations.

(a) One complete detector, with assembly and detail drawings that show the construction of the device and the materials of which it is made, should be forwarded prepaid to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, at the time the application for tests is made.

* * * * *

■ 26. Section 22.11 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer must write to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. * * *

* * * * *

PART 23—TELEPHONES AND SIGNALING DEVICES

■ 27. The authority citation for part 23 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 28. Section 23.3 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 23.3 Application procedures and requirements.

(a) * * * This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation. * * *

* * * * *

■ 29. Section 23.5 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 23.5 Conditions governing investigations.

(a) * * * These shall be sent prepaid to: Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

■ 30. Section 23.14 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. * * *

* * * * *

PART 27—METHANE-MONITORING SYSTEMS

■ 31. The authority citation for part 27 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 32. Section 27.3 is amended by revising the first sentence to read as follows:

§ 27.3 Consultation.

By appointment, applicants or their representatives may visit the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, to discuss with qualified MSHA personnel proposed methane-monitoring systems to be submitted in accordance with the regulations of this part. * * *

* * * * *

■ 33. Section 27.4 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 27.4 Application procedures and requirements.

(a)(1) * * * The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059. * * *

* * * * *

PART 28—FUSES FOR USE WITH DIRECT CURRENT IN PROVIDING SHORT-CIRCUIT PROTECTION FOR TRAILING CABLES IN COAL MINES

■ 34. The authority citation for part 28 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 35. Section 28.10 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 28.10 Application procedures.

* * * * *

(c) Upon satisfactory completion by the independent testing laboratory of the examination, inspection, and testing requirements of this part, the data and results of such examination, inspection, and tests shall be certified by both the applicant and the laboratory and shall be sent for evaluation of such data and results to the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059. * * *

* * * * *

■ 36. Section 28.31 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 28.31 Quality control plans; contents.

* * * * *

(b) * * * Military Specification MIL–F–15160D is available for examination at the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059. * * *

* * * * *

■ 37. Section 28.40 is amended by revising the second sentence of paragraph (d) to read as follows:

§ 28.40 Construction and performance requirements; general.

* * * * *

(d) * * * This document is available for examination at the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, and copies of the document are available from COMM 2000, 1414 Brook Drive, Downers Grove, IL 60515; Telephone: 888–853–3512 (toll free); *http://ulstandardsinfonet.ul.com.*

* * * * *

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

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

Authority: 30 U.S.C. 957 and 961.

■ 39. Section 33.3 is amended by revising the first sentence to read as follows:

§ 33.3 Consultation.

By appointment, applicants or their representatives may visit the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, to discuss with MSHA personnel proposed designs of equipment to be submitted in accordance with the regulations of this part. * * *

■ 40. Section 33.6 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 33.6 Application procedures and requirements.

(a)(1) * * * The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059. * * *

* * * * *

PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

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

Authority: 30 U.S.C. 957 and 961.

■ 42. Section 35.3 is amended by revising the first sentence to read as follows:

§ 35.3 Consultation.

By appointment, applicants or their representatives may visit the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, to discuss with qualified MSHA personnel proposed fluids to be submitted in accordance with the regulations of this part. * * *

■ 43. Section 35.6 is amended by revising the second sentence of paragraph (a)(1) and the third sentence of paragraph (g) to read as follows:

§ 35.6 Application procedures and requirements.

(a)(1) * * * The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059. * * *

* * * * *

(g) * * * All samples and related materials required for testing must be delivered (charges prepaid) to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

■ 44. The authority citation for part 36 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 45. Section 36.3 is amended by revising the first sentence to read as follows:

§ 36.3 Consultation.

By appointment, applicants or their representatives may visit the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059, to discuss with qualified MSHA personnel proposed mobile diesel-powered transportation equipment to be submitted in accordance with the regulations of this part. * * *

■ 46. Section 36.6 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 36.6 Application procedures and requirements.

(a)(1) * * * The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059. * * *

* * * * *

PART 74—COAL MINE DUST PERSONAL SAMPLER UNITS

■ 47. The authority citation for part 74 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 48. Section 74.6 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 74.6 Applications.

(a) * * * The applications, together with the drawings and specifications and any other related documents shall be sent to National Institute for Occupational Safety and Health, Department of Health and Human Services, Box 4256, 944 Chestnut Ridge Road, Morgantown, WV 26505, and the U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, 765 Technology Drive, Triadelphia, WV 26059.

* * * * *

[FR Doc. E8–20795 Filed 9–8–08; 8:45 am]

BILLING CODE 4510–43–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1956; MB Docket No. 03–44; RM–10650, RM–11396]

Radio Broadcasting Services; Noyack and Water Mill, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The staff dismisses as moot a petition for reconsideration filed by Monroe Board of Education (''Monroe'') and grants in part and denies in part a petition for reconsideration filed by Sacred Heart University (''SHU''). The document also deletes the allotment of FM Channel 233A at Water Mill, New York, and dismisses a counterproposal

filed by SHU. *See also* Supplemental Information.

DATES: Effective October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 03–44, adopted August 20, 2008, and released August 22, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the Memorandum Opinion and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

At the request of Isabel Sepulveda, Inc., the Notice of Proposed Rule Making in this proceeding proposed the allotment of Channel 277A at Water Mill, New York. *See* 68 FR 10682 (March 6, 2003). In response, SHU filed comments, suggesting the allotment of Channel 233A in lieu of Channel 277A at Water Mill in order to avoid displacement of its translator W277AB, Noyack, New York. Alternatively, in the event the Commission rejects the allotment of Channel 233A at Water Mill, SHU requested consideration of its counterproposal to reserve Channel *277A, reserved for noncommercial educational (''NCE'') use, at Noyack and modify the license for its Station WSUF(FM), Noyack, from Channel 210B1 to Channel *277A.

The Report and Order allotted Channel 233A at Water Mill. *See* 71 FR 9266 (February 23, 2006). Subsequently, the allotment of Channel 233A at Water Mill, New York, was inadvertently removed from the Table of Allotments. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services,* 71 FR 76208 (December 20, 2006).

On reconsideration, the staff deletes the allotment of Channel 233A at Water Mill because the original rulemaking petition, as well as its supporting comments, did not comply with Section 1.52 of the Commission's Rules, which requires that all pleadings filed by parties not represented by legal counsel be signed and verified by the petitioner. As a result, the removal of Channel 233A at Water Mill becomes official, and Monroe's petition for reconsideration is dismissed as moot.

The document also dismisses SHU's counterproposal because it violates our policy of no longer entertaining optional or alternative proposals presented in either an initial rulemaking petition or a counterproposal. Further, even if the staff were to consider the merits of SHU's counterproposal, the document concludes that the modification of a reserved band NCE license to a nonadjacent channel in the nonreserved band has been permitted in only limited circumstances and that this case does not present such rare circumstances that would justify the modification.

The document also announces that, effective with the release of this order, requests to downgrade and modify a reserved band FM station to a nonadjacent, nonreserved band channel will require the solicitation of competing expressions of interest, pursuant to Section 1.420(g) of the Commission's Rules. The document also overrules a policy set forth in Key West, Florida, and holds that the downgrade and modification of a nonreserved band FM station to a nonadjacent channel in the nonreserved FM band is subject to the requirements of Section 1.420(g) regarding the solicitation of competing expressions of interest and the availability of an equivalent class channel to accommodate such expressions of interest. *See* Key West Florida, 50 FR 26,229 (June 25, 1985).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. E8–20895 Filed 9–8–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0808251151–81155–01]

RIN 0648–AX18

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Nomenclature Change to Rename the ''Haddock Rope Trawl'' the ''Ruhle Trawl''; Final Rule

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

ACTION: Final rule; nomenclature change.

SUMMARY: NMFS changes the name of a previously approved trawl gear referred to as the ''Haddock Rope trawl'' to the ''Ruhle Trawl.'' The intent of this action is to recognize the effort of Captain Phil Ruhle, Sr., who was instrumental in the development of this gear.

DATES: September 9, 2008

ADDRESSES: Copies of the Technical Report ''Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery'' and a diagram of the Ruhle Trawl may be obtained from NMFS at the following address: National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281–9315.

FOR FURTHER INFORMATION CONTACT: Edward Stern, Fishery Management Specialist, (978) 281–9177, fax (978) 281–9135, e-mail *edward.stern@NOAA.gov*.

SUPPLEMENTARY INFORMATION: At the request of the New England Fishery Management Council, NMFS published a final rule on July 14, 2008 (73 FR 40186), with an effective date of August 13, 2008, that implemented new gear for use in the Regular B Days At Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP). The purpose of this new gear is to reduce discards under the Northeast (NE) Multispecies Fishery Management Plan (FMP). In the final rule, and in other documents relied on for the final rule, the new gear was referred to as the ''Haddock Rope Trawl'' or''Eliminator Trawl.'' A detailed description of the need for, and use of, additional types of trawl gear, and a description of the review process used to evaluate the gear's performance, can be found in the preamble of the proposed rule (73 FR 29098), published on May 20, 2008.

In 2007, Captain Phil Ruhle, Sr., was recognized with David Beutel and Laura Scrobe from the University of Rhode Island, and fellow fishermen James O'Grady and Phil Ruhle, Jr., as the grand prize winners of the 2007 World Wildlife Fund's International Smart Gear Competition. The award credited Captain Ruhle and his team for designing the new trawl, then referred to as ''The Eliminator.'' The July 14, 2008, final rule approved this gear for limited use in Federal waters under the FMP. On July 23, 2008, Captain Phil Ruhle, Sr., perished when his fishing vessel, the F/V SEA BREEZE, capsized and sank in heavy seas off New Jersey. Renaming the new gear the Ruhle Trawl is to honor Captain Phil Ruhle, Sr., as a primary developer of this gear and an innovator in the fishing industry.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be unnecessary. Because prior notice is not required, no Regulatory Flexibility Analysis (RFA) is required and one has not been prepared. The rule simply changes the name of the ''Haddock Rope Trawl'' to the ''Ruhle Trawl''. It has no effect on the gear or the manner in which it is fished. This rule is not anticipated to cause confusion in the fishery, nor will it require significant remarking of existing gear. This rule will not impact other regulations. The AA further finds pursuant to 5 U.S.C. 553(d)(3) good cause to waive the thirty (30) day delayed effectiveness period for the reasons stated above. This nomenclature change is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

Dated: September 3, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

§§ 648.2, 648.14, and 648.85 [Amended]

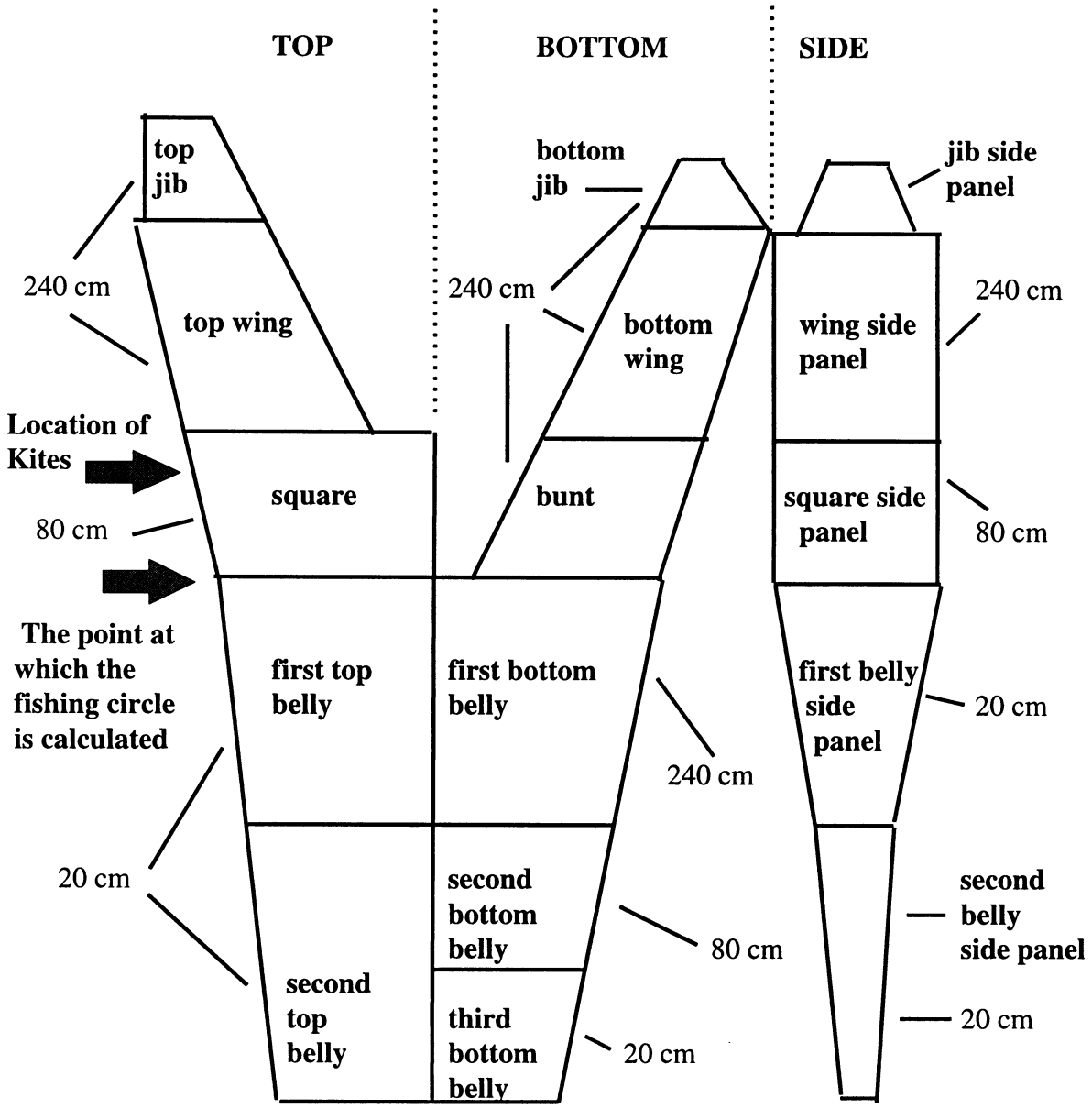
■ 2. In the table below, for each section in the left column, remove the name ''haddock rope trawl'' from wherever it appears throughout the section and add the name ''RuhleTrawl'' indicated in the right column for the number of times indicated.

Section	Remove	Add	Frequency
§ 648.2	haddock rope trawl	Ruhle Trawl	1
§ 648.14	haddock rope trawl	Ruhle Trawl	1
§ 648.85	haddock rope trawl	Ruhle Trawl	8

■ 3. Figure 1 to Part 648 is revised to read as follows:

BILLING CODE 3510–22–S

Figure 1 to Part 648



Nomenclature for 4 Seam, Ruhle Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[FR Doc. E8–20924 Filed 9–8–08; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK29

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2008 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 4, 2008, through 1200 hrs, A.l.t., October 1, 2008.

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

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

The C season allowance of the 2008 TAC of pollock in Statistical Area 610 of the GOA is 5,480 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10561, February 27, 2008). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season pollock allowance by 268 mt, the amount of the B season allowance of the pollock TAC that was not taken in Statistical Area 610. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 610 is 5,748 mt (5,480 mt plus 268 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2008 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,738 mt, and is setting aside the remaining 10 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 pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 2, 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: September 3, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–20897 Filed 9–4–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 175

Tuesday, September 9, 2008

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142333–07]

RIN 1545–BH28

Implementation of Form 990

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations necessary to implement the redesigned Form 990, ''Return of Organization Exempt From Income Tax.'' The temporary regulations make revisions to the regulations under section 6033 and section 6043 to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The temporary regulations also eliminate the advance ruling process for new organizations, change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax exempt organizations required under section 6033 of the Internal Revenue Code (Code) to file annual information returns are affected by the temporary regulations. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 10, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142333–07), 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–142333–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–142333–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Terri Harris, at (202) 622–6070; concerning submissions of comments or requests for a hearing, Oluwafunmilayo Taylor, at (202) 622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2117. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the 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 collection of information should be received by November 10, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is 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 collection 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 collection of information may be minimized, including through the application of 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 collection of information in this proposed regulation is in § 1.6033–2T. The information collected under § 1.6033–2T relates to compensation reporting by tax exempt organizations. The information that is required to be collected for purposes of § 1.6033–2T is required to be submitted on Form 990, ''Return of Organization Exempt From Income Tax.'' The estimated number of recordkeepers that will submit Form 990 is approximately 105,000.

Estimated total annual reporting burden: One hour.

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 or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provision

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 170(b), 507, 509(a), 6033, and 6043. The amendments to §§ 1.170A–9, 1.507–2 and 1.509(a)–3 eliminate the advance ruling process, clarify that support must be reported using the organization's overall method of accounting, eliminate the exception for material changes in sources of support, and change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Schedule A to the redesigned Form 990, ''Return of Organization Exempt From Income Tax.'' The amendments to §§ 1.6033–2(a)(2)(ii)(*g*) and (*h*) allow for new threshold amounts for reporting compensation and require that organizations use a calendar year basis or a basis that is prescribed by publication, form or instruction when

reporting listed officer, director, trustee, key employee and independent contractor compensation. The amendments to §§ 1.6043–3(b)(8) and (d) expand the scope of organizations subject to information reporting requirements upon a substantial contraction. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that burden on tax-exempt entities will be reduced by (1) eliminating the separate advance ruling process and the additional process for subsequently seeking a definitive ruling, (2) clarifying rules regarding the method of accounting and period for reporting certain items, and (3) providing discretion for the IRS to narrow or clarify circumstances under which reporting is required. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits 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 this regulation is Terri Harris of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects for 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.170A–9 is amended by revising paragraphs (f) and (k) to read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

* * * * *

(f) [The text of this proposed amendment to § 1.170A–9(f) is the same as the text of § 1.170A–9T(f) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) [The text of this proposed amendment to § 1.170A–9(k) is the same as the text of § 1.170A–9T(k)(1) and (k)(2) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.507–2 is revised to read as follows:

§ 1.507–2 Special rules; transfer to, or operation as, public charity.

[The text of this proposed amendment to § 1.507–2 is the same as the text of § 1.507–2T(a) through (f)(2) published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.509(a)–3 is amended by revising paragraphs (a)(2), (a)(3)(i), (c), (d), (e), (k), and (n) and adding paragraph (o) to read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

(a) * * *

(2) [The text of this proposed amendment to § 1.509(a)–3(a)(2) is the same as the text of § 1.509(a)–3T(a)(2) published elsewhere in this issue of the **Federal Register**.]

(3) * * *

(i) [The text of this proposed amendment to § 1.509(a)–3(a)(3)(i) is the same as the text of § 1.509(a)–3T(a)(3)(i) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) [The text of this proposed amendment to § 1.509(a)–3(c) is the same as the text of § 1.509(a)–3T(c) published elsewhere in this issue of the **Federal Register**.]

(d) [The text of this proposed amendment to § 1.509(a)–3(d) is the same as the text of § 1.509(a)–3T(d) published elsewhere in this issue of the **Federal Register**.]

(e) [The text of this proposed amendment to § 1.509(a)–3(e) is the same as the text of § 1.509(a)–3T(e) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) [The text of this proposed amendment to § 1.509(a)–3(k) is the same as the text of § 1.509(a)–3T(k) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(n) [The text of this proposed amendment to § 1.509(a)–3(n) is the same as the text of § 1.509(a)–3T(n) published elsewhere in this issue of the **Federal Register**.]

(o) [The text of this proposed § 1.509(a)–3(o) is the same as the text of § 1.509(a)–3T(o)(1) and (o)(2) published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.6033–2 is amended by revising paragraphs (a)(2)(ii)(*g*), (a)(2)(ii)(*h*) and (k) to read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(a) * * *

(2) * * *

(ii) * * *

(*g*) [The text of this proposed amendment to § 1.6033–2(a)(2)(ii)(*g*) is the same as the text of § 1.6033–2T(a)(2)(ii)(*g*) published elsewhere in this issue of the **Federal Register**.]

(*h*) [The text of this proposed amendment to § 1.6033–2(a)(2)(ii)(*h*) is the same as the text of § 1.6033–2T(a)(2)(ii)(*h*) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(k) [The text of this proposed amendment to § 1.6033–2(k) is the same as the text of § 1.6033–2T(k)(1) and (k)(2) published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 1.6043–3 is amended by revising paragraphs (b)(8) and (d) and adding paragraph (e) to read as follows:

§ 1.6043–3 Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

* * * * *

(b) * * *

(8) [The text of this proposed amendment to § 1.6043–3(b)(8) is the same as the text of § 1.6043–3T(b)(8) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(d) [The text of this proposed amendment to § 1.6043–3(d) is the same as the text of § 1.6043–3T(d) published elsewhere in this issue of the **Federal Register**.]

(e) [The text of this proposed amendment to § 1.6043–3(e) is the same as the text of § 1.6043–3T(e)(1) and (e)(2) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–20556 Filed 9–8–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128841–07]

RIN 1545–BG91

Public Approval Guidance for Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the public approval requirements under section 147(f) of the Internal Revenue Code (Code) applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations affect State and local governmental issuers of tax-exempt private activity bonds. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 8, 2008. Outlines of topic to be discussed at the public hearing scheduled for January 26, 2009, at 10 a.m., must be received by December 29, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–128841–07), 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–128841–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–128841–07). The public hearing will be held in the auditorium beginning at 10 a.m. at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David White, (202) 622–3980; concerning submissions of comments and the hearing, contact Fumni Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the proposed regulations has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the 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 collection of information should be received by November 10, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection 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 collection of information may be minimized, including through the application of 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 services to provide information.

The collection of information in this proposed regulation is in § 1.147(f)–1(b). This information is required to meet the public approval requirement under section 147(f). The likely respondents are issuers of qualified private activity bonds.

Estimated total annual reporting burden: 2,600 hours.

Estimated average annual burden per respondent: 1.3 hours.

Estimated number of respondents: 2,000.

Estimated frequency of responses: Not applicable (this is a third-party disclosure requirement).

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 or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to add new § 1.147(f)–1 (the ''Proposed Regulations'') relating to the public approval requirement for tax-exempt private activity bonds under section 147(f) of the Internal Revenue Code.

Explanation of Provisions

I. Introduction

In general, interest on State and local bonds is excludable from gross income under section 103 of the Internal Revenue Code of 1986 (the ''Code''). Interest on a private activity bond is excludable from gross income under section 103 only if the bond meets the requirements for a ''qualified bond'' under section 141(e) and other applicable requirements under section 103. Section 141(e) requires that a bond meet the public approval requirement of section 147(f), among other requirements, to be a qualified bond.

II. Statutory Predecessor and Existing Regulations

The predecessor to section 147(f) was section 103(k) of the Internal Revenue Code of 1954 (''1954 Code''), which was added by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324 (1982). Section 103(k) of the 1954 Code imposed a public approval requirement on industrial development bonds. Temporary Income Tax Regulations § 5f.103–2 were published under section

103(k) of the 1954 Code in the **Federal Register** on May 11, 1983 (TD 7892; 48 FR 21115) (the ''Existing Regulations'').

In the Tax Reform Act of 1986, Public Law 99–514 (the ''1986 Act''), Congress reorganized the tax-exempt bond provisions and largely carried forward the provisions of section 103(k) of the 1954 Code into new section 147(f) of the Code. In new section 147(f), Congress also expanded this public approval requirement to apply to all types of tax-exempt private activity bonds under section 141. The legislative history to the 1986 Act provides that ''[t]he conferees intend that, to the extent not amended, all principles of present law continue to apply under the reorganized provisions.'' 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–686 (1986), 1986–3 CB (Vol. 4) at 686.

III. Proposed Regulations

A. In General

In general, the Proposed Regulations provide updating, clarifying, and simplifying guidance on discrete aspects of the public approval requirement under section 147(f) (the ''*public approval requirement*''). The Proposed Regulations provide guidance that focuses generally on the scope, content, process, and timing for reasonable public notices, public hearings, and public approvals of tax-exempt private activity bonds under section 147(f).

The Proposed Regulations provide some special rules to address certain changes to the *public approval requirement* made by the 1986 Act that expanded the application of this requirement to include all types of tax-exempt private activity bonds. The Proposed Regulations also provide guidance to simplify compliance and reduce administrative burdens on State and local governments associated with the *public approval requirement*, including guidance to recognize advances in technology and electronic communication. The Proposed Regulations also ensure that the affected public will receive reasonable public notice and an opportunity for a public hearing and that appropriate governmental units will approve a bond issue following public notice and a public hearing.

The Proposed Regulations generally do not update the portions of the Existing Regulations relating to the applicable governmental units that are required to provide public approvals for a bond issue and the applicable elected representatives of those governmental units. One special rule in the Proposed Regulations provides that only the governmental unit by or on behalf of which bonds are issued is required for certain types of financings and that no separate public approval is required by a host governmental unit with respect to the location, if any, of financed facilities due to the absence of financed facilities (for example, qualified student loan bonds under section 144(b) or qualified 501(c)(3) bonds under section 145 for working capital expenditures) or the widespread or unknown locations of the financed facilities (for example, mortgage revenue bonds). The Treasury Department and the IRS solicit public comment on whether or in what respects those portions of the Existing Regulations should be updated or modified further.

The Proposed Regulations provide that the Existing Regulations continue to apply for purposes of section 147(f) to the extent that the Existing Regulations are not inconsistent with the final version of the Proposed Regulations, the 1986 Act, or subsequent law.

B. Content of Public Approval in General

The Proposed Regulations provide updated guidance on the content of information required to be included in a reasonable public notice and public approval. The Proposed Regulations continue and modify in limited respects the existing general standard from the Existing Regulations. Under the Proposed Regulations, required information for this purpose generally includes the information described in this preamble.

The Existing Regulations require a functional description of the type and use of the facility to be financed with the bond issue. In response to public comment, the Proposed Regulations streamline this requirement to allow a general reference to the type of exempt facility bond being issued or, for other types of private activity bonds, a reference to the type of qualified bond and a general description of the type and use of the facility to be financed. (for example, an exempt facility bond for an airport under section 142(a)(1), or a qualified 501(c)(3) bond to finance a hospital).

The Existing Regulations also require the maximum stated principal amount of bonds expected to be issued for the facility. The Proposed Regulations continue this requirement.

The Existing Regulations require the name of the expected initial legal owner, operator, or manager of the facility. The Proposed Regulations modify this requirement. Under the Proposed Regulations, the name provided may be either the name of the legal owner or principal user (as defined under section 144(a)) or, alternatively, the name of the true beneficial party of interest (for example, the name of a 501(c)(3) organization, which is the sole member of a limited liability company owner).

The Existing Regulations require a general description of the prospective location of the facility by street address, or, if none, by a general description that is reasonably designed to inform the public about the location of the project. The Existing Regulations assume that bond issues finance a single capital project. The Proposed Regulations provide that, for a facility that involves multiple capital projects on the same site, or adjacent or reasonably proximate sites used for similar purposes, a consolidated description of the geographic boundaries of all such capital projects may be a sufficient description of the location.

The Proposed Regulations also modify and expand the existing definition of a ''facility'' to include within the scope of that defined term the principle that a facility may include multiple capital projects.

C. Special Rules for Mortgage Revenue Bonds, Qualified Student Loan Bonds, and Certain Qualified 501(c)(3) Bonds

The 1986 Act extended the *public approval requirement* beyond traditional facility-focused industrial development bonds under the 1954 Code to include qualified mortgage bonds and qualified veterans mortgage bonds under section 143(a) and 143(b) of the Code (together, ''mortgage revenue bonds''), qualified student loan bonds under section 144(b) of the Code, and qualified 501(c)(3) bonds under section 145 of the Code. The expansion of the *public approval requirement* to these types of bonds raises questions about the scope of information appropriately needed for public approvals for these types of bonds. Section 147(f) and congressional intent generally suggest that the *public approval requirement* must be met before the issuance of the bonds. For these types of bonds, however, certain information generally required for public approvals about specific borrowers or specific projects may be unknown before the issuance of the bonds or may be inappropriate for portfolio loan financings.

The Treasury Department and IRS realize there may have been uncertainty on how to apply certain aspects of the public approval requirement to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) pooled financing bonds under section 145 after the 1986 Act in light

of special characteristics of these financings (for example, the absence of financed facilities for qualified student loan bonds or the widespread or unknown locations of the facilities to be financed for mortgage revenue bonds or certain 501(c)(3) pooled bonds). Therefore, issuers of these types of bonds that made a good faith effort to comply with section 147(f) and section 5f.103–2(f)(2) of the Existing Regulations, taking into account Congressional intent and the special characteristics of these types of financings, will not be subject to audit by the IRS merely because the issuer did not include all of the information required to be included in the public notice and public approval for industrial development bonds under section 5f.103–2(f)(2) of the Existing Regulations.

The Proposed Regulations provide special rules that allow less specific information for public approvals of mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds that finance loans described in the special rule for pooled financings under section 147(b)(4).

For mortgage revenue bonds, the Proposed Regulations generally require that reasonable public notice and public approval state the maximum stated principal amount of the bonds that will be issued to finance mortgage loans under section 143 and a general description of the geographic jurisdiction in which residences financed with proceeds of the mortgage revenue bonds will be located (for example, residences located throughout a state for an issuer with a statewide jurisdiction). No information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

For qualified student loan bonds, the Proposed Regulations generally require that reasonable public notice and public approval state the maximum stated principal amount of the bonds that will be issued to finance student loans and a general description of the type of student loan program that the loans will be made under (for example, a Federally-guaranteed student loan program under the Higher Education Act of 1965 or a state supplemental student loan program). Recognizing that these bonds do not finance facilities, the Proposed Regulations do not require names of specific student loan borrowers or locations of facilities.

For qualified 501(c)(3) bonds that finance loans described in the special provision for pooled loan financings under section 147(b)(4), the Proposed Regulations provide for a two-stage public approval process. First, within the time specified in the Proposed Regulations for public approval generally, public approval must be obtained based on the stated maximum principal amount of bonds to be issued to finance such loans and a general description of the types of facility or facilities to be financed with the loans (for example, loans for hospital facilities). No statement need be made about the location of the facility or the initial user of the facility if that information is not known at that time. Second, before a loan is originated and potentially after the issue date of the issue, a supplemental public approval for that loan must be obtained based on specific information about the borrower and the particular facility to be financed with the loan, including the location of the facility. In applying the supplemental public approval requirement to specific loans, the public approval requirement applies generally as if the bonds that financed the specific loans were reissued for purposes of section 147(b). This requirement is similar to the remedial action requirement in § 1.141–12(e)(2) and (f), which treats bonds as reissued for purposes of section 147 when complying with certain remedial action rules. The Treasury Department and the IRS solicit comments on whether a rule similar to the special two-stage public approval requirement for qualified 501(c)(3) bonds in pooled bond issues should apply to other types of pooled bond issues.

D. Insubstantial and Substantial Deviations in Public Approval Information

The Proposed Regulations provide generally that a substantial deviation between information required to be conveyed in a reasonable public notice and public approval and actual information causes the issue to fail to meet the *public approval requirement*. Whether a deviation is substantial is generally based on all the facts and circumstances.

The Proposed Regulations continue and clarify a rule from the Existing Regulations that provides that insubstantial deviations in public approval information do not invalidate a public approval. Public commentators have indicated that questions often arise about what changes are substantial.

The Proposed Regulations provide two objective safe harbors under which certain changes will not be considered substantial deviations. The Proposed Regulations provide that each of the following is an insubstantial deviation: (1) a difference in the amount of proceeds used for a facility when the amount used for the facility differs from the amount the public approval stated would be used for the facility by an amount that is not more than five percent (5%) of net proceeds of the issue; and (2) a change in initial owner or principal user of a project when the new owner or principal user is a related party (as defined in § 1.150–1) to the initial owner or principal user named in the public approval on the issuance date.

The prohibition against substantial deviations has created problems when an issuer reasonably expected at the time the bonds were issued to use the bonds proceeds for the facility stated in the public approval, but later determined, as a result of unexpected events or unforeseen changes in circumstances, that the original planned use was no longer feasible or that it did not need all of the proceeds for the facility. In these circumstances, an issuer may be unable to use the bond proceeds for another purpose because the new use was not covered by the information in the public approval.

The Proposed Regulations propose a special rule for certain cases in which there is a substantial deviation between the information required to be provided in a reasonable public notice and public approval and subsequent events. This rule provides that, if certain conditions are met, an issuer can cure a substantial deviation in public approval information through a subsequent public approval. This remedial action is similar to the permitted post-issuance public approval used for remedial actions under § 1.141–12(e)(2) and (f).

In general, the Proposed Regulations provide that an issuer may cure a substantial deviation if it satisfies several conditions. First, the issuer must have obtained a timely public approval for the bond issue in accordance with the *public approval requirement* and the issuer must have reasonably expected on the issue date to use the proceeds of the issue in accordance with the public approval information. Second, the issuer must encounter unexpected events or unforeseen changes in circumstances after the issue date as a result of which it determines either that it is no longer feasible or viable to use the proceeds of some or all of the bonds in the manner set forth in the original public approval, or that it did not need to use the full amount of the proceeds stated in the public approval for the facility. Third, the issuer must obtain a supplemental public approval for the bonds affected by the substantial deviation that meets the *public approval requirement* applied by treating those

bonds as if they were reissued for this purpose.

E. Reasonable Public Notice and Public Hearing

The Proposed Regulations update and simplify the rules in the Existing Regulations on reasonable public notice and public hearings in several ways. First, in addition to the existing permitted methods for providing reasonable public notice, which include newspaper publication or television or radio broadcast, the Proposed Regulations allow a governmental unit to provide reasonable public notice of a public hearing by posting notice of the hearing electronically on its Web site if it regularly uses that Web site to inform its residents about events affecting the residents (including notice of public meetings of the governmental unit) and it offers a reasonable alternative method for obtaining this information for residents without access to computers (such as phone recordings). In addition, the Proposed Regulations define a ''writing'' generally to include electronic communication if permitted by the governmental unit. Thus, the public may submit electronic comments to the governmental unit if permitted by the governmental unit. The proposed regulations also reduce the time required between the reasonable public notice and public hearing from fourteen days to seven business days. These revisions recognize the current market environment and the increasing importance of electronic communication.

In addition, the Proposed Regulations expand the types of governmental units that may provide public notice in an alternative manner under a general State law on public notice procedures for public hearings to include all approving governmental units.

Finally, the Proposed Regulations allow a governmental unit to cancel a public hearing if it provides reasonable public notice of the hearing and receives no requests to participate in the hearing.

III. Proposed Effective/Applicability Date

The proposed regulations will apply to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to section 147(f).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on considerations which are summarized. In general, the proposed regulations involve an existing statutory public approval requirement for tax-exempt private activity bonds under Section 147(f) of the Internal Revenue Code, which requires reasonable public notice, a public hearing, and public approval of these bonds by certain affected State or local governmental units and which imposes certain information requirements for this purpose. These proposed regulations generally address matters regarding the scope, content, process, and timing for public notices and public hearings in connection with these public approvals. These proposed regulations will affect all issuers of tax-exempt private activity bonds, including a substantial number of small State or local governmental units. These proposed regulations are not expected to have a significant economic impact on the affected entities, however, because these proposed regulations primarily are intended to streamline, simplify, and clarify the application of the existing public approval requirement in various ways, such as by allowing certain public notices on Web sites to reduce costs associated with print publication of public notices, by limiting the information required for certain types of bond issues, and by providing certain safe harbors and curative ways to assist with compliance in connection with changes in bond issues. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. The IRS and the Treasury Department specifically solicit comments from any party, particularly affected small entities, on the accuracy of this certification. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Small Business Administration for comment on its impact on small governmental jurisdictions.

Comments and Public Hearing

Before these Proposed Regulations are adopted as final regulations, consideration will be given to any written comments (including a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically 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 has been scheduled for January 26, 2009, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by December 8, 2008 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by December 29, 2008. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal and David White, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.147(f)–1 is added to read as follows:

§ 1.147(f)–1 Public approval of private activity bonds.

(a) *In general.* Interest on a private activity bond is excludable from gross income under section 103(a) only if the bond meets the requirements for a qualified bond under section 141(e) and other applicable requirements under section 103. In order to be a qualified bond under section 141(e), one of the requirements that must be met is the public approval requirement under section 147(f). This section provides guidance on the public approval requirement under section 147(f). In addition, to the extent not inconsistent with this section, the Tax Reform Act of 1986 (Pub. L. 99–514), or subsequent law, § 5f.103–2 of this chapter continues to apply for purposes of the public approval requirement under section 147(f).

(b) *Scope, content, process, and timing for public approvals*—(1) *In general.* This paragraph (b) provides guidance on the scope, content, process, and timing required for public approval of an issue of private activity bonds under section 147(f). In general, except as otherwise provided in this section, to meet the public approval requirement under section 147(f) for an issue (as defined in § 1.150–1) of private activity bonds, reasonable public notice (as defined in paragraph (c)(3) of this section) must be given in advance for a public hearing (as defined in paragraph (c)(2) of this section), a public hearing must be held, and the applicable governmental units under section 147(f)(2)(A) must provide public approval within the time set forth in paragraph (b)(8) of this section and in the manner set forth in section 147(f)(2)(B).

(2) *General rule on information required for a reasonable public notice and public approval.* Except as otherwise provided in this section, a facility (as defined in paragraph (c) of this section) to be financed with an issue is within the scope of a public approval under section 147(f) if the reasonable public notice of the public hearing and the public approval include the information set forth in paragraphs (b)(2)(i) through (iv) of this section.

(i) *The facility.* The information includes a general functional description of the type and use of the facility to be financed with the issue. For this purpose, a facility description generally is sufficient if it identifies the facility by reference to a particular category of exempt facility bond to be issued (for example, an exempt facility bond for an airport under section 142(a)(1) or an enterprise zone facility bond under section 1394(a)), or if not an exempt facility bond, by reference to another general category of private activity bond, together with accompanying information on the type and use of the facility to be financed with the issue (for example, a qualified small issue bond under section 144(b) for a manufacturing facility, a qualified 501(c)(3) bond under section 145 for a hospital facility and working capital expenditures, or a qualified mortgage bond for qualified mortgage loans for single-family housing residences under section 143).

(ii) *The maximum stated principal amount of bonds.* The information includes the maximum stated principal amount of the issue of private activity bonds to be issued to finance the facility.

(iii) *The name of the initial owner or principal user of the facility.* The information includes the name of the expected initial owner or principal user (as defined under section 144(a)) of the facility. The name provided may be either the name of the legal owner or principal user of the facility or, alternatively, the name of the true beneficial party of interest for such legal owner or user (for example, the name of a 501(c)(3) organization which is the sole member of a limited liability company owner).

(iv) *The location of the facility.* The information includes a general description of the prospective location of the facility by street address, reference to boundary streets or other geographic boundaries, or other description of the specific geographic location that is reasonably designed to inform readers of the location. For a facility involving multiple capital projects located on the same site, or on adjacent or reasonably proximate sites with similar uses, a consolidated description of the location of those capital projects may provide a sufficient description of the location of the facility. For example, a facility for a 501(c)(3) educational entity involving multiple buildings on the entity's main urban college campus may describe the location of the facility by reference to the outside street boundaries of that campus with a reference to any noncontiguous features of that campus.

(3) *Special rule for mortgage revenue bonds.* Mortgage revenue bonds under section 143 are treated as within the scope of a public approval under paragraph (b)(2) of this section if the reasonable public notice of the public hearing and the public approval state that the bonds are to be issued under section 143, the maximum stated principal amount of mortgage revenue bonds expected to be issued, and a general description of the geographic jurisdiction in which the residences to be financed with the proceeds of the mortgage revenue bonds are expected to be located, recognizing the issuer jurisdictional limitations on such financing under section 143(c)(1)(B) (for example, residences located throughout a state for an issuer with a statewide jurisdiction or residences within a particular local geographic jurisdiction, such as within a city or county, for a local issuer). In applying paragraph (b)(2) of this section to mortgage revenue bonds, no information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

(4) *Special rule for qualified student loan bonds.* Qualified student loan bonds under section 144(b) are treated as within the scope of a public approval under paragraph (b)(2) of this section if the reasonable public notice of the public hearing and the public approval state that the bonds will be issued under section 144(b), the maximum stated principal amount of qualified student loan bonds expected to be issued for qualified student loans, and a general description of the type of student loan program that the loans are to be made under (for example, a Federally-guaranteed student loan program under the Higher Education Act of 1965 or a state supplemental student loan program). In applying paragraph (b)(2) of this section to qualified student loan bonds, and recognizing that these bonds do not finance facilities, no information is required with respect to names of specific student loan borrowers or locations of facilities.

(5) *Special rule for certain qualified 501(c)(3) bonds.* Qualified 501(c)(3) bonds under section 145 to be used to finance loans described in section 147(b)(4)(B) (without regard to any election under section 147(b)(4)(A)) are treated as within the scope of a public approval under paragraph (b)(2) of this section if both of the following requirements are met—

(i) *Pre-issuance general public approval.* Within the time period defined in paragraph (b)(8) of this section, public approval is obtained after reasonable public notice of a public hearing is provided and a public hearing is held. For this purpose, a facility is treated as described in a public notice of a public hearing and public approval if the notice and public approval provide that the bonds will be qualified 501(c)(3) bonds to be used to finance loans described in section 147(b)(4)(B), the maximum stated principal amount of bonds expected to be issued to finance loans to other

501(c)(3) organizations or governmental units as described in section 147(b)(4)(B), a general description of the type of facility to be financed with such loans (for example, loans for hospital facilities or college facilities), and a statement that an additional public approval that includes specific project information will be obtained before any such loans are originated; and

(ii) *Post-issuance public approval for specific loans.* Before a loan described in section 147(b)(4)(B) is originated, a supplemental public approval for the bonds to be used to finance that loan is obtained, and that supplemental public approval meets all the requirements of section 147(f) and this section applied by treating the bonds to be used to finance such loan as if they were reissued for purpose of section 147(f) (applied without regard to this paragraph (b)(5)).

(6) *Deviations in public approval information*—(i) *In general.* Except as otherwise provided in this paragraph (b)(6), a substantial deviation between the information required to be provided in a public notice of public hearing and public approval under paragraph (b)(2) of this section and actual information causes that issue to fail to meet the public approval requirement under section 147(f). Conversely, insubstantial deviations between information required to be provided in a notice of public hearing and public approval and actual information do not cause a failure to meet section 147(f). In general, for purposes of this paragraph (b)(6), the determination of whether a deviation is substantial is based on all the facts and circumstances. However, a change in the fundamental nature or type of a project is a substantial deviation.

(ii) *Certain insubstantial deviations in public approval information.* For purposes of this paragraph (b)(6), the following deviations are treated as insubstantial deviations:

(A) *Use of proceeds.* A deviation between the amount of proceeds of the issue that the notice of public hearing and public approval stated would to be used for a facility and the amount of proceeds actually used for that facility is insubstantial if the amount of the difference does not exceed an amount equal to five percent (5%) of the net proceeds (as defined in section 150(a)(3)) of the issue.

(B) *Initial owner or principal user.* A deviation between the initial owner or principal user of the facility named in a notice of public hearing and public approval and the actual initial owner or principal user of the facility is treated as insubstantial if such parties are related parties (as defined in § 1.150–1) on the issue date of the issue.

(iii) *Special rule to address certain substantial deviations in public approval information.* A substantial deviation between the information required to be conveyed in the notice of public hearing and the public approval under paragraph (b)(2) and the actual information does not cause that issue to fail to meet the public approval requirement under section 147(f) if the following requirements are met:

(A) *Original public approval and reasonable expectations.* The issuer obtained a timely public approval (as set forth in paragraph (b)(8) of this section) for the issue in accordance with section 147(f) and, on the issue date of the issue, the issuer reasonably expected there would be no substantial deviations between the information required to be conveyed in the notice of public hearing and public approval and actual information.

(B) *Unexpected events or unforeseen changes in circumstances.* As a result of unexpected events or unforeseen changes in circumstances that arise after the issue date of the issue, the issuer determines that it cannot use some or all of the proceeds in the manner provided in the public approval either because such use is no longer feasible or viable, or because the cost of the facility was less than expected so the issuer did not need all of the proceeds specified in the public approval for the facility.

(C) *Supplemental public approval.* Before using the proceeds of the bonds that are affected by the substantial deviation for a different use, the issuer obtains a supplemental public approval for those bonds, and that supplemental public approval meets all the requirements of section 147(f) applied by treating those bonds as if they were reissued for purpose of section 147(f).

(7) *Certain timing requirements.* Except as otherwise provided in this section, a public approval of an issue under section 147(f) is timely only if the issuer obtains the public approval within one year before the issue date (as defined in section 1.150–1) of the issue. For a plan of financing described in section 147(f)(2)(C), public approval is timely for the plan of financing if the issuer obtains public approval for the plan of financing within one year before the issue date of the first issue issued under the plan of financing and the issuer issues all issues under the plan of financing within three years after the issue date of such first issue.

(c) *Definitions*—Unless otherwise stated, for purposes of this section, the following definitions apply:

(1) *Facility.* In general, for purposes of this section and section 5f.103–2, the term *facility* means one or more capital projects, including land, buildings, equipment, and other property to be financed with an issue that is located on the same site, or adjacent or proximate sites used for similar purposes, and that is subject to the public approval requirement under section 147(f). For an issue of mortgage revenue bonds under section 143 or qualified student loan bonds under section 144(b), the term *facility* means the mortgage loans or qualified student loans to be financed with the proceeds of the issue. For an issue of qualified 501(c)(3) bonds under section 145, the term *facility* means a facility, as defined in the first sentence of this paragraph (c)(1), and also includes working capital expenditures to be financed with proceeds of the issue.

(2) *Public hearing.* The term *public hearing* means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of bonds and the location and nature of the proposed facility to be financed. In general, a governmental unit may select its own procedure for a public hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, a governmental unit may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing make a written request to speak at least 24 hours before the hearing or that they limit their oral remarks to a prescribed time. If a governmental unit provides reasonable public notice for a public hearing and receives no timely requests to participate in the hearing, then the governmental unit may cancel the hearing and, for purposes of this section, the public hearing requirement will be treated as met. For purposes of this public hearing requirement, it is unnecessary, for example, to have the applicable elected representative of the approving governmental unit present at the hearing, to submit a report on the hearing to that applicable elected representative, or to meet State administrative procedural requirements for public hearings. Except to the extent in conflict with a specific requirement of this paragraph (c)(2), compliance with State procedural requirements for public hearings generally satisfies the requirements of this paragraph (c)(2). A public hearing may be conducted by an individual appointed or employed to perform such function by the

governmental unit or its agencies, or by the issuer. Thus, for example, for bonds to be issued by an authority that acts on behalf of a county, the hearing may be conducted by the authority, the county, or an appointee of either.

(3) *Reasonable public notice*. Reasonable public notice means notice that is reasonably designed to inform residents of the affected governmental units, including residents of the issuing governmental unit and the governmental unit where a facility is to be located, of the proposed issue. The notice must state the time and place for the public hearing and contain the information required under paragraph (b) of this section. Notice is presumed reasonable if given no fewer than seven (7) business days before the public hearing in one of the ways permitted by this paragraph (c)(2). Notice is treated as reasonably designed to inform affected residents of an approving governmental unit if it is given in one of the following ways:

(i) *Newspaper publication*. Public notice may be given by publication in one or more newspapers of general circulation available to the residents of the governmental unit.

(ii) *Radio or television broadcast*. Public notice may be given by radio or television broadcast to the residents of the governmental unit.

(iii) *Governmental unit Web site posting*. Public notice may be given by electronic posting on the approving governmental unit's Web site for its residents, provided that the governmental unit regularly uses that Web site to inform its residents about events affecting the residents (including notice of public meetings of the governmental unit) and the governmental unit offers a reasonable, publicly known alternative method for obtaining this information for residents without access to computers (such as phone recordings).

(iv) *Alternative State law public notice procedures*. Public notice may be given in a way that is permitted under a general State law for public notices for public hearings for the approving governmental unit.

(4) *Writing*. Unless specifically stated otherwise in this section, if permitted by the governmental unit, the term writing includes electronic communication.

(5) *Mortgage revenue bonds*. The term *mortgage revenue bonds* means qualified mortgage bonds under section 143(a) of the Code or qualified veterans' mortgage bonds under section 143(b) of the Code.

(d) *Special rule on required governmental unit approvals for certain types of financings*. In applying section 147(f)(2) and § 5f.103–2(c) of this chapter to mortgage revenue bonds under section 143, to qualified student loan bonds under section 144(b), and to the portion of an issue of qualified 501(c)(3) bonds under section 145 that finance working capital expenditures, the governmental unit by or on behalf of which those types of bonds are issued is treated as the only governmental unit required to provide a public approval and no separate public approval is required by a host governmental unit with respect to the location, if any, of a financed facility.

(e) *Effective/applicability date*. Except as otherwise provided in this section, § 1.147(f)–1 applies to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to section 147(f).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–20771 Filed 9–8–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–0534–200816; FRL–8712–5]

Approval and Promulgation of Implementation Plans North Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina in three submittals dated November 30, 2005, March 16, 2007, and June 20, 2008. The proposed revisions modify North Carolina's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the ''2002 NSR Reform Rules''). In addition, the proposed revisions address an update to the NSR regulations promulgated by EPA on November 29, 2005 (''Ozone Implementation NSR update'') relating to the implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), recordkeeping and reporting requirements, and provisions recognizing nitrogen oxides (NO_X) as a precursor to ozone. The June 20, 2008, SIP submittal also contains proposed revisions that are not related to EPA's 2002 NSR Reform Rules. EPA will propose action on those revisions in a separate **Federal Register** notice.

DATES: Comments must be received on or before October 9, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–0534, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: adams.yolanda@epa.gov*.
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–0534'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–0534.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina State Implementation Plan, contact Ms. Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9140; e-mail address: *ward.nacosta@epa.gov*. For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562–9214; e-mail address: *adams.yolanda@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What action is EPA proposing today?
II. Why is EPA proposing this action?
III. What is EPA's analysis of North Carolina's NSR rule revisions?
IV. What action is EPA taking today?
V. Statutory and Executive Order Reviews

I. What action is EPA proposing today?

On November 30, 2005, March 16, 2007, and June 20, 2008, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (DENR), submitted revisions to the North Carolina SIP. The SIP submittals consist of revisions to North Carolina Air Quality Rules, Subchapter 2D. Specifically, the November 30, 2005, proposed SIP revisions include changes to Regulation 15A (North Carolina Administrative Code) NCAC 2D .0531, ''Sources in Nonattainment Areas.'' The March 16, 2007, submittal includes changes to Regulation 15A NCAC 2D .0530, ''Prevention of Significant Deterioration.'' The June 20, 2008, submittal consists of additional changes to Regulations 15A NCAC 2D .0530, and .0531. DENR submitted these revisions in response to EPA's December 31, 2002, November 7, 2003, and November 29, 2005, revisions to the Federal NSR program. Pursuant to section 110 of the Clean Air Act (''CAA'' or ''Act''), EPA is now proposing to approve these SIP revisions. The June 20, 2008, submittal also included revisions to NCAC Subchapter 2D, Section .2400, Clean Air Interstate Rules, which EPA is not taking action on at this time.

II. Why is EPA proposing this action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The purpose of this action is to propose to approve the SIP submittals from the State of North Carolina that include the provisions of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the NAAQS—''attainment'' areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—''unclassifiable'' areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—''nonattainment'' areas. Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a

significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr*.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, e.g. 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action and established that a ''reasonable possibility'' applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). The ''reasonable possibility'' provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

Also relevant to DENR's submittals, on November 29, 2005 (70 FR 71612), EPA promulgated implementation provisions for the 1997 8-Hour Ozone NAAQS—Phase 2, which made changes to the NSR regulations. These included, among other requirements, a requirement that emissions of NO_X be considered ozone precursors. States were required to submit SIP revisions incorporating these changes by no later than June 15, 2007.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules with different but equivalent regulations.

On November 30, 2005, March 16, 2007, and June 20, 2008, the North Carolina DENR submitted revisions to EPA for the purpose of revising the State's NSR permitting provisions to adopt EPA's NSR Reform Rules and the Ozone Implementation NSR update. EPA is proposing to approve these submittals pursuant to section 110 of the CAA.

III. What is EPA's analysis of North Carolina's NSR rule revisions?

North Carolina currently has a SIP-approved NSR program for new and modified stationary sources. EPA is now proposing to approve revisions to North Carolina's existing NSR program. North Carolina's SIP submittals consist of a compilation of amendments to State rules that became State-effective between May 1, 2005, and May 1, 2008. Copies of North Carolina's revised NSR rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above. A discussion of the specific changes to North Carolina's rules comprising the proposed SIP revisions follows.

North Carolina Regulation 15A NCAC 2D .0530, ''Prevention of Significant Deterioration,'' contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under Part C of title I of the CAA (the PSD program). The PSD program applies to sources that are major stationary sources or undergoing major modifications in areas that are designated as attainment or unclassifiable with regard to any NAAQS. North Carolina's PSD program was originally approved into the SIP by EPA on February 23, 1982, and has been revised several times since then in order to remain consistent with federal rule changes.

North Carolina's permitting requirements for major sources in or impacting upon nonattainment areas are set forth at Regulation 15A NCAC 2D .0531, ''Sources in Nonattainment Areas'' (NNSR program). The North Carolina NNSR program was originally approved into the North Carolina SIP on July 26, 1982, and has been revised several times since then in order to remain consistent with federal rule changes. The NNSR requirements apply to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by Part D of title I of the CAA. To receive approval to construct, a source that is subject to these requirements must show that it will not cause a net increase in pollution, will not create a delay in meeting the NAAQS, and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER).

The changes to North Carolina's NSR rules, which EPA is now proposing to approve into the North Carolina SIP, were submitted to update the existing North Carolina rules to meet the requirements of the 2002 NSR Reform Rules and the Ozone Implementation NSR update. These SIP revisions address baseline actual emissions, actual-to-projected actual applicability tests, PALs, recordkeeping and reporting requirements, and provisions recognizing NO_X as a precursor to ozone. North Carolina's NSR rules incorporate by reference (IBR) the federal NSR rules at 40 CFR 51.166 and 51.165, as amended June 13, 2007, except for the definition of ''baseline actual emissions,'' the stayed equipment replacement provisions (ERP) (69 FR 40274, July 1, 2004),[1] the PAL adjustment provisions at 51.166(w)(10)(iv)(a) and 51.165(f)(10)(iv)(A), the recordkeeping and reporting requirements at 51.166(r)(6) and 51.165(a)(6), and the Ozone Implementation NSR update provisions at 51.165(a)(8), (a)(9) and (a)(10).

EPA's evaluation of the North Carolina SIP submittals included a line-by-line comparison of the proposed revisions with the federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. As mentioned above, North Carolina chose to IBR the federal rules with several changes. The definition of

[1] EPA promulgated the ERP on October 27, 2003 (*68 FR 61248*). The ERP was challenged and the D.C. Circuit Court of Appeals stayed the ERP on December 24, 2003. On March 17, 2006, the Court vacated the ERP. *See New York* v. *EPA*, 443 F.3d 880 (D.C. Cir. 2006).

''baseline actual emissions'' at subchapter 2D .0530(b)(1) and .0531(a)(1) was changed to remove the provision allowing emissions units that are not electric utility steam generating units (EUSGUs) to look back 10 years to select the baseline period. North Carolina rules treat EUSGUs and non-EUSGUs the same by allowing a look back of only 5 years. However, North Carolina rules provide the option of allowing a different time period, not to exceed 10 years, if the owner or operator demonstrates that it is more representative of normal source operation. In addition, North Carolina rules require EUSGUs to adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestack Act.

With regard to the PAL adjustment provisions at 51.166(w)(10)(iv)(a) and 51.165(f)(10)(iv)(A), the federal regulations provide the option that if the emissions level is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level or it may set the PAL at a different level considering other factors per 51.166(w)(10)(iv)(b) and 51.165(f)(iv)(B) respectively. North Carolina rules at subchapter 2D .0530(i) and .0531(h) require that the PAL be renewed at the same level if emissions are greater than or equal to 80 percent of the PAL.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA's December 21, 2007, clarifications of the term ''reasonable possibility'' (72 FR 72607), North Carolina did not incorporate by reference all the provisions at 40 CFR 51.166(r)(6) and 51.165(a)(6) or adopt the federal ''reasonable possibility'' standard. Instead, North Carolina adopted recordkeeping and reporting requirements that apply to all modifications that use the actual-to-projected-actual applicability test. Therefore, the North Carolina provisions meet the minimum recordkeeping and reporting requirements of the federal rule. Pursuant to the EPA December 21, 2007, rulemaking on the ''reasonable possibility'' standard, North Carolina is required to submit a notice to EPA within 3 years to acknowledge that its regulations fulfill these requirements.

With regard to the Ozone Implementation NSR update, North Carolina incorporated by reference all the November 29, 2005, rule revisions except for the provisions at 40 CFR 51.165(a)(8), (9) and (10). North Carolina did not IBR 40 CFR 51.165(a)(10), which addresses PM_{10} precursors in PM_{10} nonattainment areas, because there are no PM_{10} nonattainment areas in North Carolina. North Carolina did not IBR 40 CFR 51.165(a)(8) and (a)(9), which relate to the applicability of NO_X as a precursor for ozone and offset ratios in nonattainment areas; however, North Carolina rules have equivalent requirements at subchapter 2D .0531(c) and (f). With respect to the offset ratios, North Carolina's rules only address the offset ratio for moderate nonattainment areas, which is the current ''highest'' classification in the State. There is only one 8-hour ozone nonattainment area in North Carolina—the Charlotte-Gastonia-Rock Hill area—which is classified as moderate nonattainment. At the time that any area(s) in North Carolina are reclassified to any level above moderate during a future designation process, North Carolina rules will have to be revised to address the appropriate offset ratios.

In addition to incorporating the federal rules by reference with several changes, North Carolina's rule revisions include two additional provisions that do not directly relate to the 2002 NSR Reform rules, including: (1) Incorporating by reference 40 CFR 52.21(r)(2) to clarify the period of validity of approval to construct; and (2) requiring that all new natural gas-fired electrical utility generating units install best available control technology (BACT) or LAER, as appropriate. This second requirement was included in the North Carolina rules for clarity and consistency with restrictions on use of allowances imposed by an agreement resulting from provisions of the North Carolina Clean Smokestacks Act.[2]

After evaluation of the submittals and supporting documentation for revisions to North Carolina's NSR regulations, EPA has determined that the differences from the federal regulations discussed above do not make North Carolina's NSR program less stringent than the federal program. Therefore, EPA has determined that the proposed SIP revisions are consistent with the federal program requirements for the preparation, adoption and submittal of implementation plans for NSR set forth at 40 CFR 51.165 and 51.166, and are therefore approvable.

IV. What action is EPA taking today?

EPA is proposing to approve the changes made to North Carolina's Regulations 15A NCAC 2D .0530 and .0531, as submitted by the North Carolina DENR on November 30, 2005, March 16, 2007, and June 20, 2008, as revisions to the North Carolina SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that

[2] Any allowances for emissions reductions achieved under the Clean Smokestacks Act are not available to the subject facilities, nor any other sources, and may not be used to offset emissions and avoid installation of BACT or LAER on new natural gas-fired units.

it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 29, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E8–20874 Filed 9–8–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1003]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 8, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1003, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or.(email) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Hunterdon County, New Jersey, and Incorporated Areas				
Back Brook	Upstream of Van Lieu's Rd	+117	+119	Township of East Amwell.
	Upstream of Route 179	+193	+195	
First Neshanic River	Downstream of U.S. Route 202	+147	+148	Township of Raritan.
	Upstream of Railroad	+154	+160	
Holland Brook	Downstream of Hillcrest/Centerville Rd	+99	+101	Township of Readington.
	Upstream of Holland Brook Rd	+148	+148	
Neshanic River	Downstream of Rainbow Hill Rd	+106	+104	Township of East Amwell.
	Downstream of Old York Rd	+120	+125	
Neshanic River	Upstream of Everitt Rd	+123	+128	Township of Raritan.
	Downstream of Kuhl Rd	+135	+137	
Second Neshanic River	Upstream of U.S. Route 202	+141	+143	Township of Raritan.
	Upstream of Joanna Farm Rd	+171	+172	
South Branch Raritan River	Downstream of Old York Rd	+97	+97	Township of Raritan.
	Downstream of Railroad	+106	+107	
South Branch Raritan River	Upstream of Higginsville Rd	+92	+92	Township of Readington.
	Downstream of Rockafellows Mills Rd	+104	+104	
Third Neshanic River	Downstream of U.S. Route 202	+137	+140	Township of Raritan.
	Upstream of Everitt Rd	+149	+152	
Walnut Brook	Upstream of Railroad	+154	+160	Township of Raritan.
	Upstream of Mine Rd	+189	+191	
Walnut Brook	Upstream of Corporate Limits	+167	+170	Borough of Flemington.
	Upstream State Route 12	+179	+180	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Flemington
Maps are available for inspection at Borough Hall, 38 Park Avenue, Flemington, NJ 08822.

Township of East Amwell
Maps are available for inspection at Municipal Building, 1070 Route 202/31, Ringoes, NJ 08551–1051.

Township of Raritan
Maps are available for inspection at Municipal Building, One Municipal Drive, Flemington, NJ 08822.

Township of Readington
Maps are available for inspection at Municipal Building, 509 Route 523, Whitehouse Station, NJ 08889.

Transylvania County, North Carolina, and Incorporated Areas				
Allison Creek	Approximately 450 feet upstream of the confluence with Lamb Creek.	+2115	+2116	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 1,100 feet upstream of Camp Straus Road.	+2189	+2187	
Davidson River Tributary 1	At the confluence with Davidson River	+2108	+2109	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 1,440 feet upstream of Ecusta Road	+2138	+2144	
Lime Kiln Creek	Approximately 0.6 mile upstream of the confluence with French Broad River.	+2149	+2150	Unincorporated Areas of Transylvania County.
	Approximately 750 feet upstream of Ross Road (State Road 1334).	+2211	+2213	
Mason Creek	Approximately 50 feet upstream of Whitmire Road (State Road 1128).	+2158	+2159	Unincorporated Areas of Transylvania County.
	Approximately 0.4 mile upstream of Cherryfield Loop (State Road 1392).	+2209	+2227	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Brevard

Maps are available for inspection at City of Brevard Planning Department, 95 West Main Street, Brevard, NC.

Unincorporated Areas of Transylvania County

Maps are available for inspection at Transylvania County Inspections Department, 98 East Morgan Street, Brevard, NC.

Crockett County, Tennessee, and Incorporated Areas

South Fork of Forked Deer River.	At the Crockett/Madison/Haywood county boundary ...	None	+319	Unincorporated Areas of Crockett County.
	Approximately 1,365 feet upstream of the confluence with Connley Creek (At the Crockett/Madison county boundary).	None	+324	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Crockett County

Maps are available for inspection at 1 S. Bell Street, Courthouse, Alamo, TN 38001.

Dickson County, Tennessee, and Incorporated Areas

East Piney River	At the confluence of Piney River	None	+584	Unincorporated Areas of Dickson County, City of Dickson.
	Approximately 3,400 feet upstream of the confluence of Willow Branch.	None	+696	
Fivemile Creek	Approximately 2,700 feet downstream of County Highway 1847.	None	+548	Unincorporated Areas of Dickson County, Town of White Bluff.
	Approximately 3,370 feet upstream of County Highway 1847.	None	+584	
Piney River	At the confluence with East Piney River	None	+584	Unincorporated Areas of Dickson County.
	Approximately 200 feet upstream of County Road 1858.	None	+629	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Dickson

Maps are available for inspection at Director of Planning and Zoning, 200 Center Avenue, Dickson, TN 37055.

Town of White Bluff

Maps are available for inspection at 1016 Taylor Town Road, White Bluff, TN 37187.

Unincorporated Areas of Dickson County

Maps are available for inspection at Director of Planning and Zoning, 2 Court Square, Charlotte, TN 37036.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Humphreys County, Tennessee, and Incorporated Areas				
Kentucky Lake (Tennessee River).	At the Humphreys/Perry/Benton county boundary	None	+375	Humphreys County, City of New Johnsonville.
	At the Humphreys/Houston/Benton county boundary ..	None	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of New Johnsonville
Maps are available for inspection at City Hall, 323 Long Street, New Johnsonville, TN 37134.

Humphreys County
Maps are available for inspection at Chamber of Commerce, 124 E. Main Street, Waverly, TN 37185.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–20822 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7786]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On June 20, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 35114. The table provided here represents the flooding source, location of referenced elevation, effective and modified elevation, and communities affected for Bristol County, Massachusetts (All Jurisdictions). Specifically, it addresses flooding source ''Buzzards Bay.''

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction

In the proposed rule published at 73 FR 35114, in the June 20, 2008 issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Bristol County, Massachusetts and Incorporated Areas'' addressed flooding sources ''Buzzards Bay.'' That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Bristol County, Massachusetts (All Jurisdictions)				
Buzzards Bay	Approximately 1,650 feet East of intersection of River Road and Redwing Lane.	+13	+24	Town of Dartmouth, City of New Bedford, Town of Fairhaven, Town of Westport.
	Approximately 875 feet South from end of Club House Drive.	+31	+24	

Dated: August 26, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–20821 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7786]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On June 20, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 35114. The table provided here represents the flooding source, location of referenced elevation, effective and modified elevation, and communities affected for Plymouth County, Massachusetts (All Jurisdictions). Specifically, it addresses flooding source ''Atlantic Ocean.''

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction

In the proposed rule published at 73 FR 35114, in the June 20, 2008 issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Plymouth County, Massachusetts and Incorporated Areas'' addressed flooding source ''Atlantic Ocean.'' That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Plymouth County, Massachusetts (All Jurisdictions)				
Atlantic Ocean	Approximately 150 feet south of intersection of Brant Beach Avenue and Ocean View Avenue.	+17	+19	Town of Hingham, Town of Hull, Town of Marion, Town of Mattapoisett and Town of Wareham.
	Approximately 210 feet southeast of intersection of Highland Avenue and Mount Pleasant Way.	+9	+33	

Dated: August 26, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–20823 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0023; 1111 FY07 MO–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Bonneville Cutthroat Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to list the Bonneville cutthroat trout (*Oncorhynchus clarkii utah*) as a threatened subspecies throughout its range in the United States, pursuant to the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that listing the Bonneville cutthroat trout as either threatened or endangered is not warranted at this time. We ask the public to continue to submit to us any new information that becomes available concerning the status of or threats to the subspecies. This information will help us to monitor and encourage the conservation of the subspecies.

DATES: The finding in this document was made on September 9, 2008.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov.* Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119; telephone (801) 975–3330. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at *paul_abate@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register**.

Previous Federal Actions

On February 26, 1998, we received a petition, dated February 5, 1998, from the Biodiversity Legal Foundation requesting that the Service list the Bonneville cutthroat trout (*Oncorhynchus clarkii utah*) (BCT) as threatened in U.S. river and lake ecosystems where it continues to exist, and to designate its occupied habitat as critical habitat within a reasonable period of time following the listing. On December 8, 1998, we published a 90-day petition finding for the BCT in the **Federal Register** (63 FR 67640). We found that the petition presented substantial information indicating that the subspecies may be warranted for listing under the Act, and initiated a review of the subspecies' status within its historic range.

In the 1998 90-day finding, we solicited additional data, comments, and suggestions from the public, other governmental agencies, the scientific community, industry, and other interested parties concerning the status of the BCT throughout its range. The comment period for submission of additional information ended on January 7, 1999, but was reopened (64 FR 2167) during January 13 through February 12, 1999. We published a 12-month finding in the **Federal Register** on October 9, 2001 (66 FR 51362), and documented that the BCT was not warranted for listing under the Act because it was neither endangered nor likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

On February 17, 2005, we were sued by the Center for Biological Diversity, and others, on the merits of the 12-month finding. On March 7, 2007, the District Court of Colorado dismissed the lawsuit after determining that Plaintiffs failed to demonstrate the not warranted finding was arbitrary, capricious, or contrary to law. The Plaintiffs appealed to the 10th Circuit Court of Appeals on May 4, 2007.

On March 16, 2007, in the interim between the lawsuit dismissal and appeal, the Solicitor of the Department of the Interior issued a formal opinion regarding the legal interpretation of the term ''significant portion of the range'' of a species (DOI 2007). The opinion provides guidance on analysis intended to determine whether a species is in danger of extinction throughout a significant portion of its range when it is not in danger of extinction throughout its entire current range. Because this opinion was pertinent to the BCT decision, we withdrew the 2001 12-month finding for BCT (USFWS 2007, entire), and initiated a new status review to include significant portion of the range analysis. We published a notice in the **Federal Register** (73 FR 7236) announcing the opening of a comment period from February 7 through April 7, 2008. The notice specified that the new status review would include consideration and analysis of all information previously submitted, and any new information provided regarding the status of the BCT.

Species Biology

The BCT is native to the Bonneville basin, and is 1 of 14 subspecies of cutthroat trout recognized by Behnke (1992, pp. 3–21, 132–138) that are native to interior regions of western North America. BCT generally have large, evenly distributed spots, but a high degree of intra-basin variation exists. BCT tend to develop large, pronounced spots that are evenly distributed on the sides of the body rather than concentrated posteriorly as in the Yellowstone cutthroat trout (*Oncorhynchus clarkii bouveri*)

subspecies. Coloration in BCT is generally dull compared to other cutthroat subspecies; however, coloration can vary depending on environmental conditions and local genetic composition (Behnke 1992, pp. 132–138).

Vertebrae typically number 62–63, slightly higher than in other subspecies. Scales in lateral series average 150–170. BCT average between 16–21 gill rakers, with a mean of 18–19, except the Snake Valley type, which have 18–24 (mean, 20–22). Another important characteristic of all cutthroat subspecies is the presence of basibranchial teeth, which are absent in rainbow trout (Behnke 1992, p. 132). Numbers of basibranchial teeth provide information about subspecies derivation and relatedness. The Snake Valley type have profuse basibranchial teeth, averaging 20–28, while most other BCT average 5–10 (Behnke 1992, p. 132).

Life strategies exhibited by BCT include stream resident (occupy home ranges entirely within relatively short reaches of streams), fluvial (migrate as adults from larger streams or rivers to smaller streams to reproduce), adfluvial (migrate, sometimes many kilometers, as mature adults from lakes to inlet or outlet streams to spawn), and lacustrine (lake) forms. The life strategy that a particular BCT population exhibits likely depends on a combination of environmental conditions and genetic plasticity of inherited traits. Very little information is available to suggest the extent of plasticity and what environmental characteristics may cue a successful shift in life strategy. Most information is based on the success or failure of transplants of various life forms among different aquatic ecosystems. Furthermore, evidence suggests that BCT populations within a single stream can comprise multiple life history strategies (resident, fluvial, adfluvial), and that individuals may use mainstem rivers to move between and among drainages where they are not fragmented by water diversions or barriers (Kershner *et al.* 1997, entire).

May *et al.* (1978, p. 19) found that male BCT sexually matured at age 2 while females matured at 3 years of age. However, Bear Lake BCT were reported to mature much later, with adults normally beginning to mature at 5 years of age but not spawning until age 10 (Neilson and Lentsch 1988, p. 131). Both the age at maturity and the annual timing of spawning vary geographically with elevation, temperature, and life history strategy (Behnke 1992, p. 136; Kershner 1995, pp. 28–30). Lake resident trout may begin spawning at 2 years and usually continue throughout their lives, while adfluvial individuals may not spawn for several years (Kershner 1995, pp. 28–30). Annual spawning of BCT usually occurs during the spring and early summer at higher elevations at temperatures ranging from 4–10 °C (May *et al.* 1978, p. 19). May *et al.* (1978, p. 19) reported BCT spawning in Birch Creek, Utah, beginning in May and continuing into June. BCT in Bear Lake began spawning in late April and completed spawning in June (Nielson and Lentsch 1988, p. 131). The wild broodstock at Manning Meadow Reservoir (9,500 feet elevation) spawn from late June to early July (Hepworth and Ottenbacher 1997, p. 1). In Lake Alice, Wyoming, fish were predicted to spawn from late May until mid-June (Binns 1981, p. 47).

Fecundity of cutthroat is typically 1,200–3,200 eggs per kilogram (kg) (2.2 pounds (lbs)) of body weight (Behnke 1992, p. 33). In Birch Creek, a 147 millimeters (mm) (5.8 inches (in)) BCT female produced 99 eggs, a 158 mm (5.8 in) female produced 60 eggs and a 176 mm (6.9 in) female produced 176 eggs (May *et al.* 1978, p. 19). Whereas in Raymond Creek, Wyoming, 3 females ranging from 124 to 246 mm (4.9 to 9.7 in) averaged 165 eggs (Binns 1981, p. 48). Evidence suggests fecundity of lake-dwelling BCT is greater. Fecundity of females in Lake Alice averaged 474 eggs/female (Binns 1981, p. 48), while females in Manning Meadow, Utah, averaged 994 eggs/female (D. Hepworth, Utah Division of Wildlife Resources, unpubl. data). Incubation times for wild BCT have not been verified, but Platts (1957, p. 10) suggested eggs hatch and fry begin to emerge approximately 45 days after spawning, depending on temperature.

Larvae typically emerge in mid-to-late summer, depending on spawning times. Once emerged, larvae or fry, as they are commonly called, are poor swimmers and typically migrate to stream margins. Adfluvial BCT spend 1 or 2 years in streams before migrating to the Lake (Nielson and Lentsch 1988, p. 131).

Growth of resident BCT is highly dependent on stream productivity. In general, growth of trout tends to be slower in high-elevation headwater drainages than in lacustrine environments, but this likely depends on temperatures and food base. In Birch Creek, Utah, age 1 fish averaged 84 mm (3.3 in), age 2 fish averaged 119 mm (4.7 in), age 3 fish averaged 158 mm (6.2 in), and age 4 fish averaged 197 mm (7.8 in) in length (May *et al.* 1978, p. 17). Growth in two Wyoming streams was faster, and age 4 fish averaged 282 to 320 mm (11.1 to 12.6 in) in length (Binns 1981, p. 44). In contrast, BCT in Bear Lake grow to an average size of 560 mm (22.0 in) and 2 kg (4.4 lbs) (Nielson and Lentsch 1988, p. 131). Historic accounts of BCT in Utah Lake suggest fish may have reached a meter in length (Notes from Yarrow and Henshaw in 1872 as described by Tanner 1936). Platts (1957, p. 10) reported that some BCT taken from Utah Lake a century ago attained weights of over 11.3 kg (25 lbs).

Little is known about feeding habits of BCT. In general, BCT trout are insectivorous, especially in stream habitats. Both terrestrial and aquatic insects appear to be important to their diet (May *et al.* 1978, pp. 7–10; Binns 1981, p. 48). In Birch Creek, May *et al.* (1978, pp. 9–10) reported BCT diets were diverse in summer, while in the fall in Trout Creek, Utah, their diet consisted primarily of terrestrial insects. Dipterans and debris were the dominant food items for immature trout, while terrestrial insects were the dominant prey for mature individuals. BCT may display more plasticity in feeding habits depending on the system or specific population characteristics. Little information has been collected on BCT to understand the extent of feeding shifts of BCT. Platts (1957, p. 4) suggested that cutthroat do not need to feed on fish to attain large sizes but will do so where insects are not abundant.

Interactions With Nonnative Fish

BCT may or may not persist when nonnative trout are stocked into BCT waters. The actual mechanism that dictates the survivorship of BCT in the presence of nonnatives is unknown, but the recent discovery that numerous BCT populations have persisted for decades in the presence of rainbow trout (*Oncorhynchus mykiss*), Yellowstone cutthroat trout, and other nonnatives suggests BCT is not always displaced by nonnatives as previously thought. However, BCT can hybridize with rainbow trout and Yellowstone cutthroats in some situations and be displaced by the superior competitor, brook trout (*Salvelinus fontinalis*). The degree of hybridization appears to vary with the persistence of the stocked fish and also with habitat conditions as does the level of competition with brook trout.

Benhke (1992, p. 107) reported that BCT native to the Bear River drainage adapted to the harsh and fluctuating environments of desert basin streams, remaining the dominant trout today in many streams where nonnative trout were introduced. This seems to be a fairly unique trait of BCT compared to other cutthroat subspecies. There is still no specific rationale as to why BCT would persist better than other desert

cutthroat subspecies, yet something in its unique genetic composition seems to allow BCT to persist where other cutthroat subspecies have been found to be displaced.

For example, Bear Lake BCT, probably due to the unique environmental conditions in which they developed, have resisted hybridization with and replacement by nonnative trout. Yellowstone cutthroat trout, Yellowstone cutthroat rainbow trout hybrids, and rainbow trout were consistently stocked into Bear Lake for decades. Benhke (1992, p.137) examined specimens from Bear Lake and compared these to museum specimens from the lake and with cutthroat trout from the Bear River drainage and found no evidence of hybridization among their taxonomic characters. Nielson and Lentsch (1988, p.130) similarly reported that, after examining the DNA of 52 Bear Lake specimens, no rainbow trout alleles were observed in any fish.

Since the early 1990's, many additional remnant BCT populations have been found in streams that had been stocked with rainbow trout or Yellowstone cutthroat trout (Utah Division of Wildlife Resources, unpublished data). These BCT populations were assumed to be lost through hybridization until recent surveys found BCT present. Results of these surveys suggest BCT have retained much of their natural genetic integrity despite intensive nonnative stocking efforts.

Introduced brook trout have been stocked, legally and illegally, into some BCT waters. BCT do not hybridize with brook trout, but brook trout are thought to acquire resources better and reproduce and recruit more efficiently than BCT. The specific mechanism of how brook trout displace BCT is unknown, but greater fecundity, earlier maturity, and tolerance of higher densities gives brook trout an advantage over the native BCT (Griffith 1988, p. 105; Fausch 1989, pp. 307–312). The extent of threat to BCT from brook trout varies depending on environmental conditions of the stream. Although not considered the greatest threat to the persistence of BCT, competition from introduced brook trout can and has displaced native BCT populations.

Habitat Requirements

Trout, regardless of their evolutionary history, require 4 types of habitat during various stages of their life history: spawning habitat, nursery or rearing habitat, adult habitat, and overwintering habitat. Spawning gravels are required for spawning success and can be a limiting factor in high-gradient streams where the current carries off suitable spawning gravel (Behnke 1992, p. 25). Conversely, an even greater concern may be accumulation of fine sediments into interstitial spaces of spawning gravels, which prevents egg incubation and reduces larval survival. Such fines can become dominant in the sediments when poor land-use practices alter flow regimes, remove riparian vegetation, and/or degrade overall watershed conditions. These human-induced activities can aggravate already fragile soils and geology in vulnerable desert climates.

Little information is available on specific habitat requirements for BCT; however, there is a wealth of information on salmonid habitat conditions in general which appear to generally represent those of BCT (Pennak and Van Gerpen 1947, entire; Binns and Eiserman 1979, entire; Scarnecchia and Bergersen 1987, entire). For example, well-oxygenated water, cooler temperatures in general and a complexity of instream habitat structure, such as large woody debris and overhanging banks, are considered good trout habitat conditions. For various species, subspecies, and local forms, adaptations and tolerance of these conditions varies. BCT have also been found to survive and be fairly robust in what is considered marginal salmonid habitat conditions (e.g., turbid water, fine sediments, warmer temperatures, poor structural habitat). This may be because BCT have evolved in a desert environment where climate can cause fluctuations in water and sediment regimes and environmental condition (Behnke 1992, p. 107).

It was previously thought that with the exception of three lacustrine systems, Bear Lake (Utah and Idaho), Utah Lake, and Alice Lake (Wyoming), BCT were historically found in cool headwater streams throughout the Bonneville basin. However, more recent research and status and genetic surveys reveal BCT populations are found at high, moderate, and low elevations (within the range of elevations in the Bonneville Basin) in small headwater streams, such as those of the north slope of the western Uintas, to larger mainstem rivers, such as the Thomas Fork of the Bear River (UDWR, unpublished data).

Historic Habitat

BCT likely historically occupied all suitable habitats within the Pleistocene Lake Bonneville basin, which included portions of Idaho, Nevada, Utah, and Wyoming. The desiccation of ancient Lake Bonneville about 8,000 years ago likely fragmented the BCT into remaining streams and lakes throughout the basin, resulting in several slightly differentiated groups of BCT, including: (1) The Bear River basin; (2) the Bonneville basin proper, including the Wasatch Mountain and Sevier River drainages; and (3) the Snake Valley, an arm of ancient Lake Bonneville that was isolated during an earlier desiccation event (Behnke 1992, pp. 132–138). There is general consensus among the scientific community, including the Service, that all these groups represent the BCT subspecies (Shiozawa 2008, p. 1). For the purposes of this finding, all three groups are considered BCT.

The BCT Conservation Team, which includes biologists from Wyoming Game and Fish Department (WGFD), Utah Division of Wildlife Resources (UDWR), Nevada Division of Wildlife (NDOW), Idaho Department of Fish and Game (IDFG), Bureau of Land Management (BLM), U.S. Forest Service (USFS), the National Park Service (NPS), and the Service, completed a status report (May and Albeke 2005) that describes the rangewide status of BCT in the United States. The rangewide status report summarized the best available information on BCT (May and Albeke 2005, pp. i, 16, 103–104). The status report was peer reviewed by five recognized experts in the fields of fishery biology, conservation biology, and genetics. The peer reviewers found that the status report provided sound scientific data to use in this 12-month finding.

The 2001 finding on Bonneville Cutthroat Trout included 28,863 hectares (71,322 acres) of lake habitat (indicated as an adfluvial life history) (USFWS 2001, pp. 34, 44, 50, 75). The 2005 BCT rangewide status report relied on a protocol that was not designed to address lake populations; however, 8 lakes connected to occupied stream habitat were included as 412 stream kilometers (km) (256 stream miles (mi)) (May and Albeke 2005, pp. 107, 110, 120). Thus, throughout the remainder of the document, all occupied BCT habitat is reported as stream habitat and includes lake populations. These lake populations are an important component in conserving BCT, and some lakes are specifically designated to preserve genetically pure populations (Donaldson 2008, pp. 8–9).

The BCT Conservation Team's status report included an analysis of probable historic distribution (May and Albeke 2005, pp. 6, 16–19). Our understanding of BCT historic distribution is based on habitat thought to be occupied around 1800. The determination of occupation in this era was based on historic

climactic conditions, stream channel gradient, barriers that would preclude fish, and expertise of fishery biologists familiar with each watershed. The analysis resulted in 10,876 (km) (6,758 mi) of stream habitat potentially occupied historically (May and Albeke 2005, pp. 6, 16–19). This analysis included estimated stream miles for historically occupied BCT lakes because the analysis protocol was not designed to address lake populations separately. The historically occupied habitat identified in each State included: Utah—7,916 km (4,919 mi) (73 percent); Idaho—1,854 km (1,152 mi) (17 percent); Wyoming—974 km (605 mi) (9 percent); and Nevada—132 km (82 mi) (1 percent) (May and Albeke 2005, pp. 6, 16–19). The United States is divided and sub-divided into successively smaller hydrologic units that are classified into four levels: regions, sub-regions, accounting units, and cataloging units. Fourth-level hydrologic unit codes (HUCs) in the Lake Bonneville Basin, including Pine Valley, Tule Valley, Pilot-Thousand Springs, Northern Great Salt Lake Desert, Lower Beaver, and Sevier Lake, were not included as historical habitats because they were judged unsuitable due to extreme conditions, because information on them prior to 1800 is unavailable, or because historical records indicate that they were devoid of fish.

Current Distribution

Current distribution of BCT is approximately 3,830 km (2,380 mi)—35 percent of the probable historically occupied stream miles (May and Albeke 2005, p. 19). Currently occupied habitat identified in each State includes Utah—2,438 km (1,515 mi) (64 percent); Idaho—869 km (540 mi) (23 percent); Wyoming—476 km (296 mi) (12 percent); and Nevada—47 km (29 mi) (1 percent) (May and Albeke 2005, p. 19).

The BCT is well distributed throughout its range in four watershed-based GMUs (see Figure 1; Table 1 below). In earlier assessments, five GMUs or GUs (geographic units) were identified as including current populations of BCT; however, we combined the Bear Lake and Bear River GMUs because they occur within one watershed, and our analysis was conducted by watershed (May and Albeke 2005, pp. 4–5). This reconfiguration of GMUs does not imply a reduction in the geographic area where BCT occur (May and Albeke 2005, pp. 2–5).

Within each GMU, streams were identified to the 4th-level hydrologic unit and assigned to a HUC. BCT occupy habitat in 22 of the 23 HUCs determined to likely have supported historical habitat. BCT also occupy habitat in three HUCs that are either partially or totally outside of the subspecies historic range (May and Albeke 2005, pp. 19–20); most of these populations were reintroduced into suitable habitat with no record of nonnative fish (Behnke 1992, pp. 134–135). The Bear River GMU has the greatest extent of currently occupied BCT habitat (2,010 km/1,249 mi), followed by the Northern Bonneville (1,532 km/952 mi), Southern Bonneville (187 km/116 mi), and the West Desert (101 km/63 mi).

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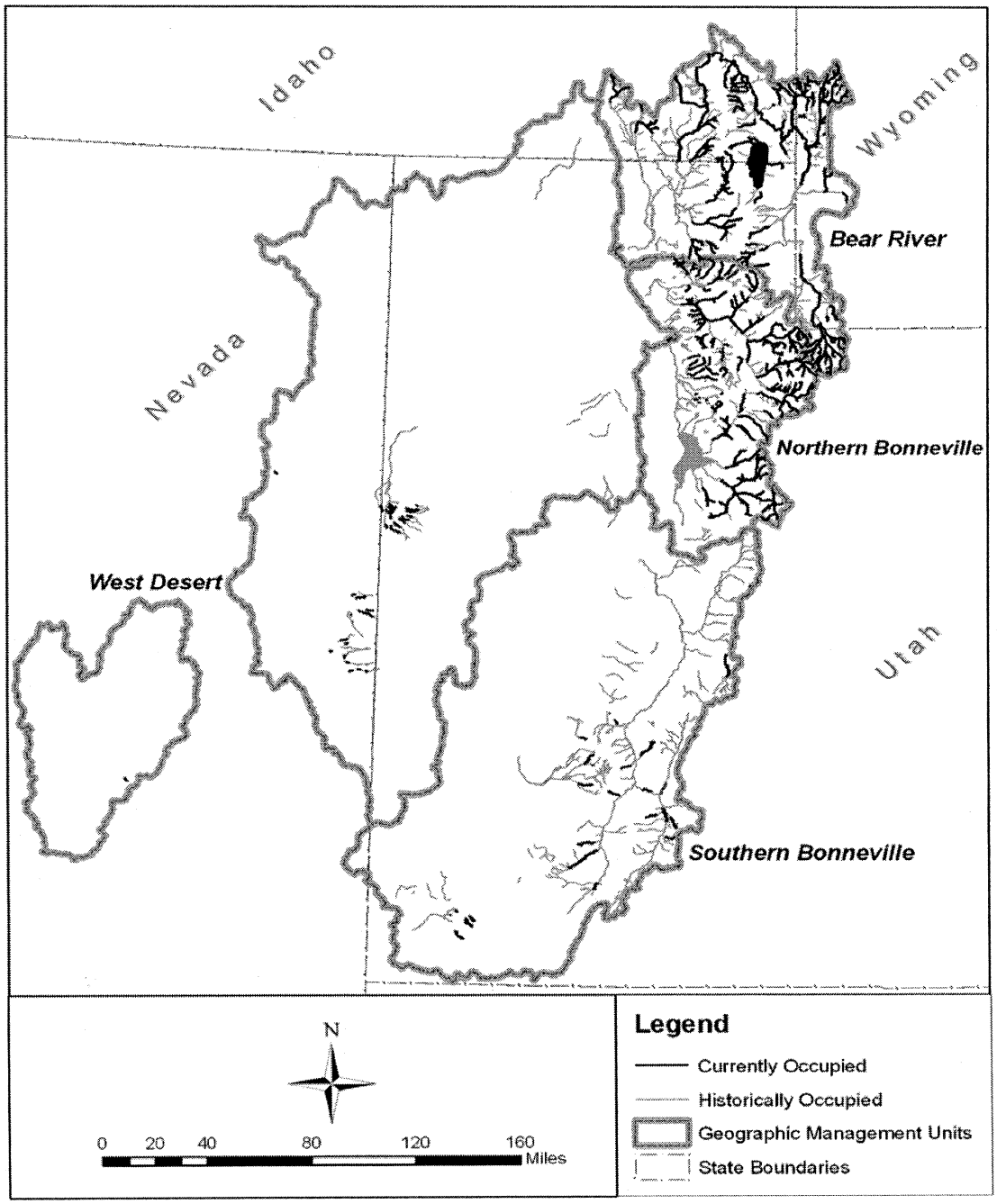

Figure 1. All BCT Populations

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TABLE 1—FROM MAY AND ALBEKE 2005, (P. 19), TABLE 21 (P. 34)

GMU name	Km (mi) currently occupied by BCT	Number of BCT conservation populations	Km (mi) occupied by BCT conservation populations
Bear River	2,010 (1,249)	33	1,753 (1,089)
Northern Bonneville	1,532 (952)	65	1,318 (819)
Southern Bonneville	187 (116)	21	145 (90)
West Desert	101 (63)	34	101 (63)
Totals	3,830 (2,380)	153	3,316 (2,061)

Hybridization

Hybridization is a concern for many cutthroat trout populations. An introgressed population results when a nonnative species or subspecies is introduced into or invades native cutthroat trout habitat, the two species then interbreed (i.e., hybridize), and the resulting hybrids survive and reproduce. If the hybrids backcross with one or both of the parental species, genetic introgression occurs. Continual introgression can eventually lead to the loss of genetic identity of one or both parent species, thus resulting in a ''hybrid swarm'' consisting entirely of individual fish that often contain variable proportions of genetic material from both of the parental species.

Our criteria for considering the potential impact of introgressed populations of BCT are consistent with a position paper, titled ''Genetic Considerations Associated with Cutthroat Trout Management,'' developed by the fish and wildlife agencies of the intermountain western States (UDWR 2000a, pp. 1–9). Signatories to the position paper include the IDFG, Montana Fish Wildlife and Parks, NDOW, New Mexico Game and Fish Department, UDWR, and WGFD. The document identified, for all subspecies of inland cutthroat trout, three tiers of natural populations for prioritizing conservation and management options under State fish and wildlife management authorities: (1) Core conservation populations composed of greater than 99 percent cutthroat trout genes; (2) conservation populations that generally ''have less than 10 percent introgression, but in which introgression may extend to a greater amount depending upon circumstances and the values and attributes to be preserved''; and (3) cutthroat trout sport fish populations that, ''at a minimum, meet a species'' phenotypic expression defined by morphological and meristic characteristics (counts of body parts) of cutthroat trout.''

The premise of the position paper on genetic considerations was that populations must conform, at a minimum, to the morphological and meristic characteristics of a particular cutthroat trout subspecies in order to be included in a State's conservation and management plan for that subspecies. Conservation populations of a cutthroat trout subspecies include fish believed to have uncommon or important genetic, behavioral, or ecological characteristics relative to other populations of the subspecies. Sport fish populations, conversely, while conforming morphologically (and meristically) to the scientific taxonomic description of the subspecies, do not meet the additional genetic criteria of conservation or core, and are managed for their value as sport fish rather than for conservation of the subspecies.

Following the State management agencies' position paper (UDWR 2000a, pp. 1–9), a ''core population'' is genetically unaltered (pure), and a ''conservation population'' is pure (a core population) or slightly introgressed (typically less than 10 percent) due to past hybridization, yet has attributes worthy of conservation. Therefore, conservation populations include both core populations (genetically pure) and populations that are less than 10 percent introgressed with rainbow trout or other subspecies of cutthroat trout (May and Albeke 2005, p. 71). The BCT rangewide status report (May and Albeke 2005, p. 31) identified 153 stream populations (3,316 km/2,061 mi) as conservation populations (see Table 1, above, and Figure 2). Of the 153 conservation populations, 73 (732 km/455 mi) are considered core populations containing genetically pure BCT.

We consider all core and conservation populations, as defined under the States' standards and as described by May and Albeke (2005, p. 31), for purposes of conducting this status review. Because the categories are nested (conservation populations include core populations), we refer to them collectively as ''BCT conservation populations'' in the remainder of this finding. Some of the data presented in May and Albeke (2005) pertains to all BCT populations (including sport fish) or habitat. Those areas of this document that do not specify ''conservation populations,'' therefore, are referring to all BCT populations. We conducted our analysis on conservation populations because we found that BCT with less than 10 percent introgression still express important behavioral, life history, or ecological adaptations of indigenous populations within the range of the subspecies, and remain valuable to the overall conservation and survival of the subspecies (Campton and Kaeding 2005, pp. 1323–1325). (See also Factor E, Hybridization with Nonnative Fishes.)

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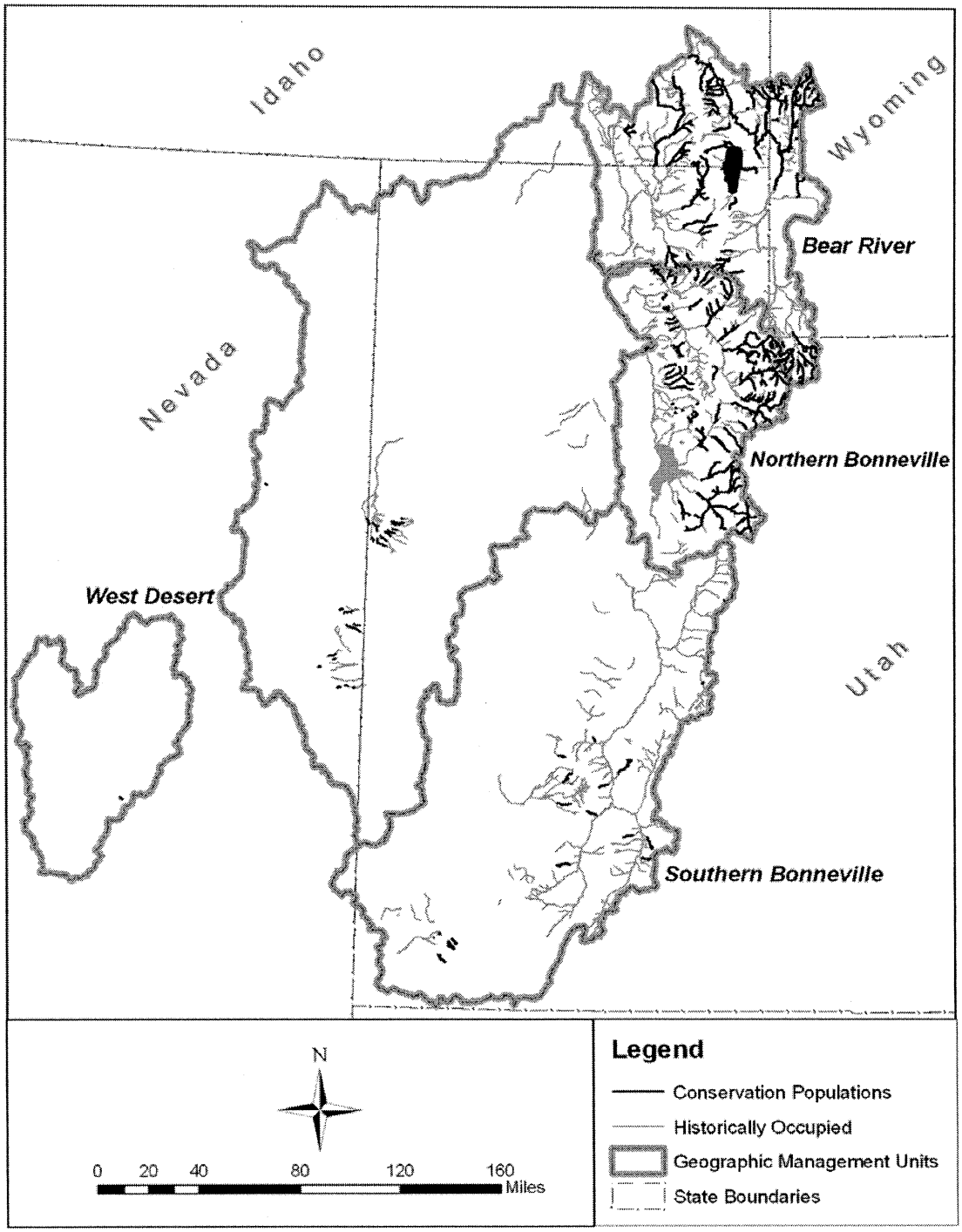

Figure 2. BCT Conservation Populations

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Conservation Populations

Designated BCT conservation populations exist throughout the subspecies' historic range (May and Albeke 2005, p. 31)—in all four States and in the four designated GMUs. BCT currently occupy some habitat in 22 of the 23 HUCs historically occupied, and BCT that meet the conservation population definition (less than 10 percent introgressed) exist in 19 of those HUCs. BCT conservation populations were also identified in two HUCs (Spring-Steptoe and Hot Creek-Railroad Valley) outside historic range, and three additional conservation populations were identified outside historical range within the Upper Virgin HUC. The majority of conservation populations (65) occur in the Northern Bonneville GMU occupying 1,318 km (819 mi). The remainder of BCT conservation populations are relatively equally distributed among the West Desert (34), Bear River (33), and Southern Bonneville (21) GMUs. These populations occupy 101 km (63 mi), 1,753 km (1089 mi), and 145 km (90 mi) respectively (May and Albeke 2005, p. 34).

The majority of BCT conservation populations (101; 66 percent) occur as isolated, non-networked populations (May and Albeke 2005, p. 34); 25 populations (16 percent) are weakly connected; 15 populations (10 percent) are moderately connected; and 12 populations (8 percent) have migratory forms and open migration corridors that make them strongly connected. The strongly connected populations occur in Utah, Idaho, and Wyoming in the Bear River Geographic Management Unit (GMU) and Northern Bonneville GMU (May and Albeke 2005, pp. 34, 107, 115, 117).

BCT Population Trend

BCT population trend and status can be interpreted from results of previous assessments conducted from the early 1970's through the present time. Hickman (1978, pp. 121–122) identified approximately 15 populations he considered ''pure'' occupying approximately 34 km (21 mi) of stream habitat. Duff (1988, pp. 121–127) reported 41 ''genetically pure'' BCT populations (39 stream populations) in association with 304 km (189 mi) of stream habitat. A draft Service status review that was never finalized reported 48 genetically pure BCT populations throughout the Bonneville Basin (USFWS 1993, pp. 1–62). Duff (1996, pp. 38–39) further refined his BCT population distribution reporting 81 genetically ''pure'' populations occupying 377 km (234 mi) of stream habitat. A Service status review found that BCT occupied a total of 1,372 km (852 mi) of stream habitat and 28,352 ha (70,059 acres) of lake habitat totaling 291 populations (USFWS 2001, pp. iv–v).

BCT assessments conducted between 1978 and 1996 generally counted populations that were thought to be genetically ''pure.'' The 2001 Service assessment determined the genetic status of each population but was more inclusive and counted management, conservation, and potential conservation populations (USFWS 2001, pp. viii–xi). The May and Albeke (2005) assessment assessed the genetic status of each BCT population and then categorized genetic status based on the criteria in the State's genetic position paper (UDWR 2000a, pp. 1–9).

Methods for tallying the number of individual BCT populations tended to vary by individual assessment, with earlier assessments tending to split tributary populations from mainstem river reaches. In contrast, methods used for the May and Albeke (2005, p. 64) assessment tended to group populations by higher order streams, thereby reducing the total count of populations. Thus, it is important to consider changes in the amount of occupied habitat when assessing population trends from different assessments rather than to simply rely on changes in number of populations. The number of known stream miles occupied by BCT conservation populations increased over time from 15 populations in 34 km (21 mi) of habitat in 1978 to 153 populations in 3,316 km (2,061 mi) in 2004. Some of the increase in BCT conservation populations and their habitat is the result of conservation actions such as the discovery of more populations in recent years; the expansion or restoration of populations; and the eligibility of populations for conservation status (through genetic testing) that were previously considered hybridized. Increases in the amount of BCT conservation population habitat is also due to the use of a more accurate GIS-based assessment method that incorporated the National Hydrography Dataset geodatabase (May and Albeke 2005, p. 2) and also the inclusion of lakes as river miles as used in the most recent assessment protocol (see above), although the increase due to the inclusion of lakes in the river mile calculation only accounts for an additional 412 km (256 mi) of stream habitat.

The BCT Conservation Team's most recent analysis of the number of BCT conservation populations and the extent of their habitat indicates that conservation populations have increased from 153 populations in 3,316 km (2,061 mi) in 2004 (May and Albeke 2005, p. 31), to 172 populations in 3,333 km (2,071 mi) in 2008 (Burnett 2008a, entire). This most recent evaluation of the BCT Conservation Team's database was cursory and was not performed for other population parameters discussed in May and Albeke (2005) (i.e., restoration activities, genetic status, population health and densities, etc.); however, it does indicate that the number of BCT conservation populations and their habitat continue to increase.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize information regarding the threats to the BCT in relation to the five factors provided in section 4(a)(1) of the Act.

In making this finding, we considered all scientific and commercial information that we received or acquired up to the publication of the 2001 12-month finding (66 FR 51362), and after publication of the notice initiating this finding (73 FR 7236; February 7, 2008). We relied primarily on published and peer-reviewed documentation for our conclusions, and most significantly, the rangewide status report competed by the BCT Conservation Team (May and Albeke 2005, entire).

Pursuant to section (4) of the Act, a species may be determined to be an endangered or threatened species on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We evaluated whether threats to the BCT may affect its survival. Our evaluation of threats, based on the best scientific and commercial information available, is presented below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Land use activities associated with each BCT conservation population were

identified and documented in May and Albeke (2005, p. 52, Table 30), but the significance of the activities was not determined in relation to individual populations or to the conservation of the subspecies. Non-angling recreation (camping, hiking, ATV use, etc.) occurs in 69 percent of the conservation populations. Livestock grazing occurs in 58 percent of the conservation populations, roads in 69 percent, timber harvest in 20 percent, and dewatering in 30 percent. Hydroelectric plants, water storage, or flood control occurs in 20 percent of the conservation populations. A small percentage of populations have mining or nonnative fish stocking. Many populations have more than one land use occurring in the area.

A comprehensive assessment of the effects of land management practices on BCT does not exist. However, an evaluation of habitat quality was conducted for currently occupied habitat (May and Albeke 2005, p. 26). The evaluation considered both natural habitat features and human-caused disturbances. A stream ranked as ''excellent'' if it had ample pool habitat, low sediment levels, optimal temperatures, and quality riparian habitat. A ''good'' habitat quality rating indicated the presence of some less than ideal attributes, and ''fair'' indicated the presence of a greater number of less than ideal attributes. A ''poor'' habitat quality rating indicated the inferior conditions of most habitat attributes. Of total occupied habitat for all BCT populations, excellent habitat conditions occurred in approximately 196 km (122 mi) (5 percent); good conditions occurred in 1,801 km (1,119 mi) (47 percent); fair conditions occurred in 1,080 km (671 mi) (28 percent); poor conditions occurred in 628 km (390 mi) (16 percent), and unknown conditions occurred in 126 km (78 mi) (3.2 percent). The majority of occupied habitat (80 percent) is in fair, good, or excellent condition.

Livestock grazing occurs in 58 percent of the BCT populations. Livestock grazing became an acute problem for watershed health in the late 1880s through 1930s when grazing, particularly sheep grazing, was so extensive and ill-managed that widespread watershed damage occurred throughout many areas in the Bonneville Basin. In fact, at the turn of the century, sheep were crowding cattle out of many areas (Peterson and Speth 1980, p. 179). In the Wasatch Mountains east of Salt Lake City, Utah, over-grazing of sheep denuded mountain meadows, some to the extent that watersheds experienced massive soil loss, land-slides and severe erosional damage. In addition to resident sheep, Utah was at a geographical 'crossroads of the west' where hundreds of sheep were trailed to and from neighboring States (Peterson and Speth 1980, p. 179).

Overgrazing by sheep can be particularly damaging to overall watershed conditions. Sheep have been known to graze vegetation down to dirt and ''grub'' away at grass roots thereby damaging the soil mantle, which acts to hold water for plant uptake (Peterson and Speth 1980, p.180). The extensive watershed damage typical of over-grazing sheep in the early 20th century led to massive soil erosion, land slides, and flooding during heavy precipitation (Cottam 1947, pp. 23–29). Such events can completely eliminate local fish populations and undoubtedly affected local populations of BCT. For streams already fragmented from diversions or dewatering, such events could have led to local extirpation of BCT where no connected populations were available to recolonize streams after a catastrophic flood.

Although cattle grazing can affect watershed conditions as well, the greater concern for cattle grazing stems from direct stream impacts where cattle are permitted to dwell in or are trailed through stream channels and riparian areas. Without adequate management, cattle can trample and destroy instream habitat and stream banks. They forage on lush riparian vegetation, which leads to degraded stream conditions and changes in channel morphology. Trampling destroys undercut banks resulting in wider and shallower channel morphology. Where this occurs, BCT can be impacted by increased water temperatures, loss of habitat complexity, altered macroinvertebrate food-base, and increased deposition of fine sediment (Platts 1991, p.393; Belsky *et al.* 1999, p.420; Rinne 1999, p.14).

When livestock grazing is managed appropriately, it can occur in the vicinity of stream and riparian habitat, and habitat conditions that support fish populations can still be maintained (Fitch and Adams 1998, p. 197). The Western Watersheds Project, Inc. (Carter 2008, pp. 1–7) submitted information documenting grazing impacts in localized areas in the Bear River GMU. Much of the information documents range conditions relative to grazing allotment reauthorizations. The information and conclusions presented included the assumption that, if a land management activity occurred within the vicinity of a BCT population, it was adversely affecting the population. We recognize that overgrazing can cause adverse impacts to individual populations of BCT. However, only 16 percent of the occupied stream miles have poor habitat quality (May and Albeke 2005, p. 26). Specific information on grazing impacts to BCT habitat on a rangewide basis is not available. We found no information indicating that overgrazing significantly affects the rangewide status of BCT now, or will do so in the foreseeable future. Therefore, we conclude that overgrazing is not a significant threat to BCT.

Roads, timber harvest, and dewatering occur in the area of some BCT populations. Similar to water development and grazing, the greatest impacts from timber harvesting occurred from 1850 to 1950. Although timber harvesting still occurs on National Forest Lands and very limited private lands in the Bonneville Basin, and may have some detrimental impacts on streams and watersheds, timber harvesting standards have substantially improved, particularly regarding protection of streams and watershed condition, and the catastrophic destruction that occurred in the first 100 years of pioneer settlement no longer occurs.

Currently, timber harvesting affects BCT through the indirect effects of road building and deforestation. Road building is known to add fine sediment to streams where roads cross or follow stream channels. These fine sediments can fill interstitial spaces important for successful spawning and survival of eggs and larval fish as well as alter the macro-invertebrate food base (Williams and Mundie 1978, p.1032–1033). Deforestation can also add sediment input into streams where riparian buffers are not implemented. Loss of trees also increases water volume draining into stream channels, which can alter flow and sediment regimes or exacerbate catastrophic flooding during extreme precipitation events.

Within the Bonneville Basin, timber harvesting is fairly limited compared to other areas of the inland west, mainly because the arid climate is not conducive to extensive, lush forests. Timber harvest occurs in only 20 percent of BCT conservation population habitat (May and Albeke 2005, p. 52, Table 30). We found no information indicating that timber harvesting significantly affects the rangewide status of BCT now, or will do so in the foreseeable future. Therefore, we conclude that timber harvesting is not a significant threat to BCT.

Direct effects of water diversions and depletions (dewatering) on BCT occur where reaches are dewatered or made inaccessible by instream barriers. Secondary effects of water development may include higher water temperatures

in summer months because of lower water volume and diminished riparian condition and altered instream and shoreline habitat, all of which can impact cutthroat trout spawning and populations (Clancy 1988, pp. 40–41). Dewatering occurs in only 30 percent of BCT conservation population habitat (May and Albeke 2005, p. 52, Table 30). Rates of habitat loss through water diversions and depletions were likely heaviest for the decades immediately after pioneer settlement, in the late 1800s, throughout the Bonneville Basin near locations of population growth. We found no information indicating that dewatering significantly affects the rangewide status of BCT now, or will do so in the foreseeable future. Therefore, we conclude that dewatering is not a significant threat to BCT.

Idaho and Nevada have no producing oil or gas wells in BCT areas. However, oil and gas development has been accelerating over the last several years in Utah and Wyoming. Oil and gas development could affect BCT through increased land disturbance from roads and pads that could cause water quality problems associated with increased sediment loads, and through leaks, spills, and discharge of produced water reaching BCT habitat (WGFD 2004, pp. 25–26). The BLM and Utah Division of Oil Gas and Mining provided information on locations of existing active and inactive wells and oil and gas leases on BLM, USFS, and other lands where BLM has jurisdiction over the subsurface mineral rights within the BCT range in Utah and Wyoming (BLM 2008a, entire; UDOGM 2008, entire). A well exists within 1.6 km (1 mi) or less of 26 BCT conservation populations (17 percent of all conservation populations). Of these 26 populations, 2 were near active or producing wells; the wells near the remaining 24 populations were non-producing and were shut-in, plugged and abandoned, or abandoned entirely for development. These non-producing wells have a greatly reduced likelihood of releasing oil and gas related contaminants into BCT habitat (BLM 2008b, entire). Relatively little overlap exists between oil and gas development sites and BCT conservation populations. BCT populations typically occur at higher elevations where minimal oil and gas activity exists. An analysis of potential future oil and gas development for the States of Wyoming and Utah indicates that the majority of leases occur outside the historic range of BCT (BLM 2008b, entire). Potential impacts to BCT resulting from oil and gas development on Federal land are typically assessed through the National Environmental Policy Act (NEPA) review process; as a result, future effects should be disclosed and effects to BCT will have to be taken into consideration due to the sensitive species management status of BCT on Federal land. Therefore, based on the best scientific and commercial information available, we conclude that dewatering is not a significant threat to BCT now, or in the foreseeable future.

Summary of Factor A

Land use practices, such as livestock grazing, road construction and maintenance, dewatering, and timber harvest, are occurring to some extent in most areas of occupied habitat. However, habitat quality ratings are fair, good, or excellent in 80 percent of BCT habitat throughout the current range of the subspecies. Approximately half of all BCT populations (49 percent) occur on Federal lands where land use regulations are in place to ensure ongoing maintenance of existing habitat (see Factor D). Restoration and conservation activities are occurring for at least 57 percent of the conservation populations.

We find that the presence alone of an activity within a stream segment containing a conservation population is not sufficient evidence to conclude that the population is threatened or that a certain land use activity affects all populations rangewide at a significant level. Additional parameters, such as magnitude of impacts, distribution and abundance of BCT populations, and population trends, lend to an overall status determination. Many species exist in managed landscapes; not all are significantly impacted by human-caused influences to the level of being considered threatened under the Act.

BCT conservation populations are well distributed in four GMUs, collectively forming a solid basis for persistence of BCT. These GMUs contain 19 of the 23 HUCs determined to have supported historical BCT habitat. In addition, BCT conservation populations currently occupy habitat in three HUCs that are either partially or totally outside the subspecies' historic range.

Based on the best scientific and commercial information available, we conclude that BCT is not now or in the foreseeable future, threatened by destruction, modification, or curtailment of its habitat or range to the extent that listing under the Act as a threatened or endangered species is warranted at this time.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No commercial harvest of BCT currently occurs, so only recreational angling could potentially result in overutilization. Data show that angling occurs in 60 percent of BCT conservation populations (May and Albeke 2005, p. 52). Utah, Idaho, and Wyoming have special regulations providing protection against over-harvest of BCT. These special regulations include catch-and-release requirements, limited harvest, fishing closures, and tackle restrictions. In addition, the remote location of many BCT streams provides protection from heavy fishing pressure (NDOW 2006, p. S–28; Baker *et al.* 2008, p. 29; Donaldson 2008, p. 3).

The State of Idaho implements several fishing regulations to manage potential angler impacts in State waters. For most streams able to support larger fish, bag limits are 2 fish greater than or equal to 40 centimeters (cm) (16 in) in length. In smaller streams, where BCT typically do not exceed 30 cm (12 in), the general stream limit is 2 fish, and no size constraints exist. In other waters, seasonal angling restrictions or catch-and-release-only regulations are implemented (IDFG 2008, pp. 3, 19). In Utah, several fishing regulations protect native cutthroat trout from overutilization. The State reduced trout bag and possession limits from eight fish to four, and imposed short-term fishing closures to protect native cutthroat trout (Donaldson 2008, p. 3). Wyoming implements angling restrictions, such as size limits, reduced bag limits, and tackle restrictions to protect BCT populations (WGFD 2008, p. 8). Many of Nevada's BCT populations occur in remote areas, which provide protection from heavy fishing pressure (Baker *et al.* 2008, p. 29). None of the four States considers angling, under their current regulations, to be a threat to the subspecies.

Collection of BCT for scientific or educational purposes is controlled by strict State permitting processes that prevent excessive sampling throughout its range in Utah, Wyoming, Idaho, and Nevada. Collection of fish tissue for genetic sampling is conducted by nonlethal techniques (Rogers 2007, pp. 1–3).

Summary of Factor B

No commercial harvest of BCT currently occurs. Only recreational angling could potentially result in overutilization. However, Utah, Idaho, and Wyoming have special regulations

providing protection against over-harvest of BCT. Also, in our 2001 12-month finding (66 FR 51362), we concluded that angler harvest did not pose a significant threat to the continued existence of BCT, and we know of no new information during development of this finding to change this conclusion. Collection of BCT for scientific or educational purposes is controlled by strict State permitting processes throughout the range of the subspecies. Therefore, we conclude that the best scientific and commercial information available indicates that overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat to BCT now, or in the foreseeable future.

Factor C. Disease or Predation

Disease

The BCT Conservation Team evaluated disease in the BCT status report (May and Albeke 2005, pp. 11–12, 40–42). Diseases considered had the potential to cause significant impacts to population health and included, but were not limited to, whirling disease, infectious pancreatic necrosis virus, and furunculosis. The BCT Conservation Team assessed risks based on proximity of disease-causing pathogens and their accessibility to a population. The majority of the populations (63 percent) have limited risk because disease and pathogens are not known to exist in the watershed, or a barrier blocks upstream fish movement. In general, isolated populations have less risk of catastrophic diseases. Fourteen populations (9 percent) are currently known to be infected with one of the identified diseases (May and Albeke 2005, pp. 40–41).

In recent years, whirling disease has become of great concern to fishery managers in western States. Whirling disease is caused by the nonnative myxosporean parasite, *Myxobolus cerebralis.* This parasite was introduced to the United States from Europe in the 1950's and requires two separate host organisms to complete its life cycle. Its essential hosts are a salmonid fish and an aquatic worm, *Tubifex tubifex.* Juvenile, sub-adult, and adult life stages of BCT have been shown to be susceptible to whirling disease in the Logan River, and some Logan River study sites exhibit a downward trend in BCT abundance (Budy *et al.* 2005, pp. xi-xiii). Despite this, BCT in the Logan River demonstrate high growth and survival rates and are generally in relatively good health. Logan River tributaries are important refuges from whirling disease-infected areas in the Logan mainstem (Budy *et al.* 2005, pp. xi-xiii). *Tubifex tubifex* is most abundant in areas of high sedimentation, warmer water temperatures, and low dissolved oxygen. Most populations of BCT occur in cold water stream habitats at high elevations, where *Tubifex tubifex* is less likely to be abundant.

All four States have developed management activities to protect BCT populations from whirling disease. Though whirling disease is known to occur in some Nevada waters, it currently does not pose a threat to BCT populations because it occurs at low levels among BCT populations (NDOW 2006, pp. S27). Regardless, Nevada is in the process of formalizing protocols for BCT reintroductions and transplants relating to disease certification and broodstock management (NDOW 2006, pp. S27, S32). Idaho has outlined several strategies to protect BCT populations from the negative effects of disease. Strategies include monitoring fish populations for disease, prohibiting importation of fish and wildlife that carry disease risk, and ensuring that stocking, translocation, and propagation of fish do not contribute to the transmission or introduction of diseases (IDFG 2008, p. 14). Utah has some of the most stringent fish disease laws in the United States, which do not allow the stocking of fish that test positive for whirling disease (Donaldson 2008, pp. 4–5). UDWR is studying the effects of whirling disease in a portion of BCT occupied waters in Utah that have been infected (Donaldson 2008, p. 4). Wyoming has a policy of not stocking fish that test positive for *Myxobolus cerebralis* (WGFD 2008, p. 9).

Predation

Of the 153 conservation populations identified in the rangewide BCT status report, 97 (63 percent) had no interaction with nonnative fish and 56 (37 percent) were sympatric with nonnative fish (May and Albeke 2005, p. 31). All BCT conservation populations sympatric with nonnative fish are located in the Bear River and Northern Bonneville GMUs. In these GMUs, BCT can be replaced by nonnative trout, but the degree to which predation is a factor in this replacement has not been well documented (Holden *et al.* 1997, pp. 3–21). Although nonnative fish can have negative effects on BCT in localized areas due to predation, research in the Logan River drainage shows that it is possible for BCT populations to persist in the presence of predacious nonnative fish (Behnke 1992, p. 107; Budy *et al.* 2005, pp. xi-xiii).

Predation can affect BCT, mainly during early life stages, where other predaceous fish occupy the same area (UDWR 2000b, p. 48). Utah has implemented several management actions intended to alleviate potential predation of BCT by nonnative trout, including: nonnative removal/barrier installation projects; barring nonnative cutthroat stocking in conservation drainages; increasing angler harvest limits for brook trout in the Boulder and Uinta Mountains; and initiating fisheries research work (Donaldson 2008, pp. 5–7). Nevada has virtually eliminated threats to BCT from nonnative fish by utilizing barriers and nonnative removal restoration projects (Baker *et al.* 2008, pp. 3–5; NDOW 2006, p. S–27).

Similar to Utah, Idaho and Wyoming have enacted management actions intended to alleviate potential predation of BCT by nonnative trout. Idaho has discontinued stocking brook trout into native trout streams, increased the daily limit for brook trout from 6 to 25, and removed or suppressed nonnative trout species that compete with BCT (IDFG 2008, pp. 6–7). Wyoming is monitoring BCT populations to ensure that nonnative populations do not become established in new waters in the Bear River drainage, have ceased stocking nonnative trout in waters managed for BCT conservation populations, and have implemented nonnative removal/barrier installation projects to control nonnative fish in BCT habitat (Emmrich 2008, p. 2; WGFD 2008, p. 10).

Summary of Factor C

Only 14 (9 percent) BCT conservation populations are infected with a significant disease, and no additional populations are at high risk for infection (May and Albeke 2005, pp. 40–41). Therefore, we conclude that the best scientific and commercial information available indicates that neither whirling disease nor other disease organisms significantly threaten BCT now, or in the foreseeable future.

Predation by nonnative fish, the primary source of predation on young BCT, may have some effect on BCT populations in the Bear River and Northern Bonneville GMUs. However, 63 percent of conservation populations have no interactions with nonnative fish. Also, research shows that it is possible for BCT populations to persist in the presence of predacious nonnative fish (Behnke 1992, p. 107; Budy *et al.* 2005, pp. xi–xiii). State fish and wildlife agencies continue to implement management actions intended to alleviate potential predation of BCT by nonnative fish. At this time, we know of

no information that indicates to us that predation significantly affects BCT now, or in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to extant threats that place the subspecies in danger of becoming either threatened or endangered. Regulatory mechanisms affecting BCT fall into three general categories: angling, land management, and water quantity.

Angling

The States of Utah, Idaho, Nevada, and Wyoming consider BCT a game species, and each State has specific regulations regarding catching BCT by angling. We concluded above that recreational angling is not a significant threat to BCT, now or in the foreseeable future (see Factor B).

Regulatory Mechanisms Involving Land Management

Numerous State and Federal laws and regulations help reduce adverse effects of land management activities on BCT. Most habitat in watersheds inhabited by BCT conservation populations is managed by Federal land management agencies, primarily the USFS and BLM, and to a limited extent the NPS. Federal laws that reduce impacts to BCT and their habitats include the Clean Water Act, Federal Land Policy and Management Act, National Forest Management Act, Wilderness Act, and National Environmental Policy Act. Approximately 49 percent of all occupied BCT habitat (including both sport fish and conservation populations) occurs on lands managed by Federal agencies, and the USFS manages the majority (May and Albeke 2005, p. 29). Of the 3,830 km (2,380 mi) of occupied habitat, 1,867 km (1,160 mi) are under Federal jurisdiction and the majority occur on National Forests (1,209 km (751 miles)) (May and Albeke 2005, p. 29); these figures include sport fish populations because figures for conservation populations alone are not available (see Table 2 below). BCT occur in a large geographic area within the following National Forests: Bridger-Teton, Caribou-Targhee, Dixie, Fishlake, Humboldt-Toiyabe, Uinta, and Wasatch-Cache. BCT occupy 11 km (7 mi) of land administered by the BLM, and 7 km (4.4 mi) managed by the NPS. Approximately 657 km (408 mi) of occupied BCT habitat occurs in wilderness areas managed by the USFS or BLM. Wilderness Areas and National Parks provide an extra level of protection for BCT because many land management activities are prohibited in them.

TABLE 2—BCT OCCUPIED LAND OWNERSHIP

[Numbers include areas occupied by both sport fish and conservation populations]

USFS	BLM	NPS	USFS and BLM Wilderness	Non-federal	Total
1,209 km (751 mi)	11 km (7 mi)	7 km (4.4 mi)	657 km (408 mi)	2,603 km (1,618 mi)	3,830 km (2,380 mi)

U.S. Forest Service

The USFS Sensitive Species Policy in Forest Manual 2670 outlines procedures for conserving sensitive species. The policy applies to projects implemented under the 1982 National Forest Management Act (NFMA). The range of the BCT is within USFS Region 4, where it is designated a sensitive species by the USFS, and where the Forests have Land and Resource Management Plans (LRMPs) developed under NFMA. The USFS has proposed a revision to NFMA in 2008; it is likely that, if the rule is finalized, LRMPs would be revised accordingly. The NFMA revision would result in more strategic and less prescriptive LRMPs that identify ecosystem-level desired conditions and provide management objectives and guidelines for meeting desired conditions (Forsgren 2008, pp. 1–2). The LRMPs might provide species-specific direction for special status species when broader, ecosystem-level desired conditions do not meet conservation requirements.

USFS Manuals and Handbooks codify the agency's policy, practices, and procedures and are sources of administrative direction for USFS employees. USFS Region 4 applies practices outlined in their Soil and Water Conservation Practices Handbook to BCT habitat (USFS 1988, pp. 1–71). This handbook states that the USFS will apply watershed conservation practices to sustain healthy soil, riparian, and aquatic systems. The handbook provides Management Measures with specific criteria for implementation. For example, Management Measure No. 11.01 states: ''The Northern and Intermountain Regions will manage watersheds to avoid irreversible effects on the soil resource and to produce water of quality and quantity sufficient to maintain beneficial uses in compliance with State Water Quality Standards.'' Irreversible effects include reduced natural woody debris, excess sediment production that could reduce fish habitat, water temperature and nutrient increases that could affect beneficial uses, and compacted or disturbed soils that could cause site productivity loss and increased soil erosion. USFS land management practices are intended to avoid these effects whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing BCT habitat is being considered in conjunction with other agency priorities. We determined that USFS BCT management policies are currently adequately reducing impacts to the species; we found no information indicating that threats would rise to a significant level in the foreseeable future.

Bureau of Land Management

The BCT is designated a sensitive species by the BLM in Utah, Wyoming, Nevada, and Idaho. BLM policy offers the same level of protection for sensitive species as for candidate species. The policy in BLM Manual 6840—Special Status Species Management (BLM 2001, pp. 06A3–.06C1), reads as follows: ''For candidate/sensitive species where lands administered by the BLM or BLM authorized actions have a significant effect on their status, manage the habitat to conserve the species by:

(a) Ensuring candidate/sensitive species are appropriately considered in land use plans.

(b) Developing, cooperating with, and implementing range-wide or site-specific management plans, conservation strategies, and assessments for candidate/sensitive species that include specific habitat and population management objectives designed for

conservation, as well as management strategies necessary to meet those objectives.

(c) Ensuring that BLM activities affecting the habitat of candidate/sensitive species are carried out in a manner that is consistent with objectives for managing those species.

(d) Monitoring populations and habitats of candidate/sensitive species to determine whether management objectives are being met.''

BLM land management practices are intended to avoid negative effects to species whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing BCT habitat is being considered in conjunction with other agency priorities. We find that BLM BCT management policies are currently adequately reducing impacts to the species; we found no information indicating that threats would rise to a significant level in the foreseeable future.

National Park Service

When the Great Basin National Park (Park) was established in 1986, management of southern Snake Mountain Range streams was transferred from NDOW and the USFS to the NPS. The Park developed a Fisheries Management Plan in 1999 that included goals of reintroducing BCT into several area streams. In 1999, 40 km (24 mi) of stream habitat was unoccupied; due to restoration activities, 7 BCT conservation populations now exist in 20 km (12 mi) of streams in and near the Park (Baker *et al.* 2008, pp. ii, 1). The Park will conduct long-term monitoring on the BCT populations and habitat. Most BCT waters within the Park are in remote, high-elevation locations where angling pressure is very light (Baker *et al.* 2008, pp. ii, 1). Livestock grazing, timber harvest, mining, and development do not occur in Great Basin National Park. We find that NPS management policies are currently adequately reducing impacts to the species; we found no information indicating that threats would rise to a significant level in the foreseeable future.

Regulatory Mechanisms Involving Water Quantity

Utah and Nevada control the implementation of instream flow regulations in BCT habitat. In Utah, the recent legislative session passed an instream flow bill (HB 117) that should benefit BCT by allowing private entities, such as Trout Unlimited, to lease 10-year water easements for instream flows (Donaldson 2008, p. 3). Wyoming has approved instream flow rights on 17 stream segments encompassing 66 km (41 mi) of BCT habitat (WGFD 2008, p. 8). We find that regulatory mechanisms regarding water policy are currently adequately protecting the species; we found no information indicating that threats would rise to a significant level in the foreseeable future.

Conservation Actions

State and Federal agencies are implementing existing programs to restore and enhance BCT habitat. The majority of the 153 conservation populations (57 percent) have one or more restoration, conservation, or management activities either completed or currently being implemented within BCT habitat (May and Albeke 2005, p. 51). The WGFD adopted a Strategic Habitat Plan in 2001 (WGFD 2008, p. 6); under this Plan, habitat biologists work with landowners and land managers to manage habitat on a watershed scale to provide benefits to both terrestrial and aquatic wildlife resources. The States of Utah and Nevada have conservation agreements and conservation strategies involving review of BCT biology and monitoring of current subspecies status and potential threat factors (NDOW 2006, pp. 1 to S–26; UBCTCT 2008, pp. 1–23; UDWR 2008a, pp. 1–41). The State of Idaho has a Management Plan for Conservation of BCT in Idaho that provides conservation direction for BCT (Teuscher and Capurso 2007, pp. 1–84).

The States of Utah, Nevada, Wyoming, and Idaho, and the USFS, BLM, NPS, Service, Confederated Tribes of the Goshute Reservation, and Utah Reclamation Mitigation and Conservation Commission are signatories to a rangewide conservation agreement and strategy for BCT. This agreement was implemented to ensure the long-term survival of the subspecies through coordination of conservation efforts among the signatory agencies (UDWR 2000b, pp. 1–90).

Numerous conservation actions have been planned and implemented through State and Federal conservation and management plans. For example, the State of Utah (where the majority of BCT habitat and conservation populations exist) submitted two chronologies detailing BCT conservation efforts over two different time frames. BCT conservation actions were grouped from 1973–2001 (approximately 378 actions) and from 2001–2008 (approximately 355 actions); actions included, for example, population surveys and monitoring, genetic analysis, changes to angling regulations, broodstock development, fencing of stream habitat, establishment of conservation easements, nonnative fish removal and restocking with BCT, habitat surveys, stocking policy changes, and general habitat enhancement projects (UDWR 2008b, entire). These chronologies show that conservation actions were occurring prior to establishment of the State of Utah conservation programs in 2000, and that the number of conservation activities increased on a yearly basis (355 within 7 years) once these programs were enacted. Additionally, the BCT Conservation Team submitted information on State and Federal BCT conservation activities from 2001 through 2007 in Utah, Wyoming, Idaho, and Nevada; activities are similar to those of the State of Utah described above (BCTCT 2008, entire).

Under our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003), we typically evaluate conservation efforts by State and local governments, and other entities, that have been planned but not implemented, or implemented but have not yet demonstrated effectiveness, in order to determine which efforts meet the standard in PECE for contributing to our finding. The actions described above were not analyzed using the PECE standard because they were implemented prior to this review and their effectiveness has been demonstrated by the general increases in BCT population numbers (as discussed in the BCT Population Trend section). State and Federal agency participation in BCT conservation plans is voluntary; however, the States included in the range of the BCT have a demonstrated history of effective management of the species. State plans are typically in place indefinitely or have a term of agreement for 5–10 years with renewal provisions for a similar time period. The rangewide BCT conservation agreement was renewed in 2008 for 10 years, with the commitment that it would be extended for an additional 10 years upon expiration. The success of the conservation actions, as explained above, indicates that participating State and Federal agencies are committed to the conservation of BCT, and the renewal of the rangewide BCT agreement gives us a reasonable expectation that these efforts will continue in the foreseeable future.

Summary of Factor D

We assessed the potential threats of livestock grazing, timber harvest, roads, water management, mining, oil and gas developments, angling, disease, and predation with regard to magnitude of impacts to BCT, and to whether regulatory mechanisms are adequate.

We find that regulatory mechanisms related to land and fisheries management are currently sufficient for mitigating potential threats to BCT, and that the stable status of the species will continue in the foreseeable future. The best scientific and commercial information available indicates that existing regulatory mechanisms have maintained or improved the status of BCT to the extent that listing under the Act as a threatened or endangered species is not warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) has concluded that warming of climate is unequivocal (2007, p. 5), and that temperature increase is widespread over the globe and is greater at higher northern latitudes (IPCC 2007, p. 30). However, future changes in temperature and precipitation will vary regionally and locally, with some areas remaining unaffected or even decreasing in temperature (IPCC 2007, pp. 46–47). Changes in precipitation are less certain than in temperature; climate models project more frequent heavy precipitation events, separated by longer dry spells, especially in Utah and the western United States (GBRAC 2007, p. A1, 14–15; IPCC 2007, p. 15).

During the past decade, the average temperature in Utah, like that of much of the globe, was higher than observed during any comparable period of the past century (IPCC 2007, pp. 31–32). As discussed below, that increase in temperature, if permanent, does not constitute a significant threat to the BCT. The remaining question is whether possible future increases in temperature will constitute a threat. Over the next 20 years, climate models estimate that the Earth's average surface temperature will increase about 1.4 °C (0.8 °F). Climate change predictions based on continental-scale analysis are generally given ranking based on degree of certainty (IPCC 2007, p. 27; GBRAC 2007, pp. 3–11). Utah is projected to warm more than the global average (GBRAC 2007, pp. ES 2–3); however, levels of confidence in projections for local-scale areas are lower than for projections at global or continental scales, and are generally not given a degree of certainty ranking (GBRAC 2007, pp. 17–20). Clear and robust future trends have not been developed for Utah (GBRAC 2007, p. 2). We cannot make reliable predictions about the magnitude or timing of future temperature increases within the range of the BCT.

Based on the Utah Governor's Blue Ribbon Advisory Council on Climate Change (2007), which is a regional study, climate change will likely cause environmental changes in Utah, which could increase challenges for BCT rangewide. According to some research, climate change has already had or is predicted to have negative consequences on coldwater fisheries globally (Nakano *et al.* 1996, p. 711; Hari *et al.* 2006, p. 24), and in the Southwest and Rocky Mountains of North America (Keleher and Rahel 1996, p. 1; Rahel *et al.* 1996, pp. 101, 102, 113), through increases in ground- and surface-water temperatures. Rahel *et al.* (1996, p. 1116) and Keleher and Rahel (1996, p. 9) predicted that elevationally diverse regions such as the Rocky Mountains will experience warming stream temperatures that could restrict cold water species, such as cutthroat trout, to increasingly higher elevations, thus reducing the geographic range and occupied stream distance and increasing habitat fragmentation. Keleher and Rahel (1996, p. 5) calculated that in Wyoming a 1 °C (1.8 °F) increase in mean July air temperatures could decrease the length of streams inhabitable by salmonid fish by 8 percent; a 2 °C (3.6 °F) increase could cause a reduction of 14 percent, a 3 °C (5.4 °F) increase could cause a 21 percent decline, a 4 °C (7.2 °F) increase could cause a 31 percent reduction, and a 5 °C (9 °F) increase could cause a 43 percent reduction. In the Rocky Mountains, Keleher and Rahel (1996, p. 5) calculated similarly high reductions of 16.8, 35.6, 49.8, 62.0, and 71.8 percent with respective temperature increases of 1, 2, 3, 4, or 5 °C in July air temperatures. One study concluded that if warming air temperatures occur, it will likely cause numerous fundamental environmental changes, including increased stream and lake temperatures, increased evaporation rates, reduced annual snowpack, changes in river flows, and increases in disturbance events such as floods, drought, and fire (Williams *et al.* 2007, p. 2).

However, even if temperatures within the range of the BCT increased by the amounts considered in these studies, it would not put the species in danger of extinction. Bonneville cutthroat trout may be able to sustain viable populations at slightly warmer temperature conditions than other cutthroat trout subspecies. For example, Williams *et al.* (2007, p. 3) reported that less than 1 percent of the total distribution of westslope cutthroat trout and Colorado River cutthroat trout occurred in streams with an average July temperature greater than 22 °C (71.6 °F), but nearly 20 percent of the historical distribution of Bonneville cutthroat trout was associated with a mean July air temperature greater than 22 °C (71.6 °F). In addition, Bonneville cutthroat trout appeared to be thermally distributed bimodally, with two peaks. The warmer second peak occurred due to an extensive network of lower elevation, warmer valley bottoms that were historically occupied (Williams *et al.* 2007, p. 3). Bonneville cutthroat trout have adapted to a broad spectrum of habitat conditions throughout their range (Kershner 1995, p. 28).

Water temperature increases could result in a potential benefit to Bonneville cutthroat trout in localized areas. Cold summer water temperatures (mean July temperature of less than 7.8 °C (46 °F)) have been found as a limiting factor to recruitment of cutthroat trout in high-elevation streams (Harig and Fausch 2002, p. 545; Coleman and Fausch 2007, pp. 1238–1240). Therefore, although climate change is likely to increase water temperatures and result in a reduction in habitat quality for lower elevation streams, some higher elevation streams may become more suitable for BCT.

Declines in low-elevation mountain snowpack have been observed over the past several decades in the Pacific Northwest and California. However, no clear long-term snowpack trends are currently evident in Utah's mountains (Hamlet *et al.* 2005, p. 4560; GBRAC 2007, pp. A1, 1–2). Dates of peak snow accumulation and peak melt have also been trending earlier, but with the most notable differences occurring in coastal areas of the West that have warmer winter temperatures (Hamlet *et al.* 2005, p. 4560). Stewart *et al.* (2005, p. 1152) indicate that spring streamflow in the western United States during the last 5 decades has shifted so that the major peak now arrives 1 to 4 weeks earlier, resulting in declining fractions of flow in the spring and summer. However, streamflows in Utah and the Intermountain West do not show clear trends over the past 50 years (GBRAC 2007, p. A1, 10).

In another study, three elements of environmental change expected to affect Western cutthroat trout as a result of climate change (increased summer water temperatures, flood events, and wildfire) were modeled to determine where a particular subspecies is likely to be at greatest risk (Williams *et al.* 2007, pp. 2–5). The three elements were modeled individually, and then combined into a composite risk and

modeled jointly. Modeling showed that 43 percent of sub-watersheds with existing BCT populations are at low or moderate risk from climate change, and 57 percent are at high risk. The modeling also evaluated BCT populations in regional areas. The composite analysis showed that cutthroat populations in most of the Bear River basin and the eastern portion of the Northern Bonneville basins are likely at low risk from climate change, while the West Desert, Southern Bonneville, and Northern Bonneville basins are in the moderate to high-risk range (Williams *et al.* 2007, p. 6).

A recent status review (73 FR 27899; May 14, 2008) for the Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*) provided a comprehensive review of potential global and regional climate change effects to that subspecies. The status review provided detailed information regarding the potential effects of temperature change, decreased stream flow, change in hydrograph, and increases in extreme events.

The Rio Grande cutthroat trout is native to the Rio Grande, Pecos, and Canadian River basins in New Mexico and Colorado (Behnke 2002, p. 219); the northern extent of this subspecies' range lies at a more southerly latitude than the range of the Bonneville cutthroat trout. Therefore, predictions of the effects of climate change are likely to differ to some extent between the subspecies. One of the effects of climate change is that salmonid species are likely to be restricted to increasingly higher elevations or to more northern latitudes (Meisner *et al.* 1988, p. 6; Regier and Meisner 1990, p.11; Keleher and Rahel 1996, p. 2; Nakano *et al.* 1996, pp. 716, 717; Rahel *et al.* 1996, p. 1122; Poff *et al.* 2002, p. 7; Rieman *et al.* 2007, p. 1558). Coldwater species occupying the southern distributions of their range, such as the Rio Grande cutthroat trout, are seen as more susceptible to extirpation as a consequence of global climate change (Poff *et al.* 2002, p. 8; Rieman *et al.* 2007, pp. 1552, 1553).

Because Rio Grande cutthroat trout primarily occupy high-elevation headwater tributaries, dispersal to new habitats is unlikely because they currently occupy the uppermost available habitat (73 FR 27899; May 14, 2008). In contrast, habitat for the Bonneville cutthroat trout is widely distributed and variable, ranging from high-elevation (3,500 m mean sea level) streams with coniferous and deciduous riparian trees to low-elevation (1,000 m mean sea level) streams in sage-steppe grasslands containing herbaceous riparian zones (Kerschner 1995; p. 28). BCT have adapted in order to survive in relatively warm water and marginal habitats, and migratory life forms historically grew to be quite large in lakes and large rivers. Some populations within the Bear River drainage in southern Idaho and northern Utah continue to exhibit the species' impressive range of life history strategies and habitat requirements, migrating seasonally between turbid, lower elevation mainstem rivers and cold, clear, high-elevation tributary streams (Trout Unlimited 2008, entire).

Climate change biological projections are based on effects models that have varying degrees of uncertainty (IPCC 2002, pp. 14–16). For example, Williams *et al.* (2007, p. 6), in their modeling of climate change and western trout, used a 3 °C temperature increase (projected for the U.S. Pacific Northwest in this century based on a 2004 University of Washington Climate Impacts Group). It is unknown when the predicted 3 °C raise in temperature might be realized. Questions also remain regarding the projected extent of climate change across regional areas, the timeframe for temperature and precipitation changes, and the overall response of fish populations. It is unclear how climate change will interact with other environmental stressors at regional levels (IPCC 2002, p. 15).

While climate change is likely to affect aquatic resources to some extent, including habitat utilized by BCT, at this time we find that these effects are not likely to cause significant long-term impacts to population viability. Current data indicate that the observed recent effects of climate change have had little significant impact on BCT population trends. BCT population trends show increasing numbers of conservation populations and increases in the amount of occupied river habitat, from 15 populations in 34 km (21 mi) of habitat in 1978, to 153 populations in 3,316 km (2,061 mi) in 2004 (May and Albeke 2005, p. 31; Hickman 1978, pp. 121–122). Therefore, although climate change may cause some level of long-term effects to aquatic habitat, we find that climate change is not currently a threat to BCT, which have adapted to a broad spectrum of habitat conditions. We also find that climate change is not likely to significantly threaten the species rangewide within the foreseeable future.

Fragmentation and Isolation of Small BCT Populations in Headwater Areas

The majority of BCT conservation populations (101; 66 percent) occur as isolated, non-networked populations (May and Albeke 2005, p. 34); 25 populations (16 percent) are weakly connected; 15 populations (10 percent) are moderately connected; and 12 populations (8 percent) have migratory forms and open migration corridors that make them strongly connected. The strongly connected populations occur in Utah, Idaho, and Wyoming in the Bear River and Northern Bonneville GMUs (May and Albeke 2005, pp. 34, 107, 115, 117).

Cutthroat metapopulations are defined as a collection of localized populations that are geographically distinct but genetically interconnected through natural movement of individual fish between populations (UDWR 2000a, p. 8). Metapopulations are important because they maintain genetic exchange and increase genetic diversity. They also provide individuals to repopulate stream segments where populations are lost due to stochastic environmental events. Metapopulations are important to the overall status of the subspecies, but they are at a higher risk for disease and invasion of nonnative fish because these elements can move into any connected populations even if they are introduced into a single localized area.

Problems associated with small, isolated cutthroat trout populations include increased risk of extirpation by catastrophic events and loss of genetic exchange. Isolated populations can also potentially be at risk of extirpation due to ongoing environmental forces causing changes in attributes such as habitat size, pool availability, or water temperatures. Several researchers have attempted to determine which environmental factors contribute to successful translocation efforts intended to augment isolated populations, and to integrate environmental factors into assessments of stream viability for cutthroat trout. Cold summer water temperature, narrow stream widths, and lack of deep pools can limit successful translocations of cutthroat trout (Harig and Fausch 2002, pp. 545–547). In high-elevation streams, cold summer water temperatures can delay spawning and lack of deep-water pools can limit overwinter survival. Modeling of these stream variables indicates that occupied stream length is an even better predictor of cutthroat trout abundance than stream temperatures; small increases in habitat length (e.g., by barrier removal or rewetting of a dewatered stream segment) can produce a disproportionately greater increase in fish abundance, increasing viability of isolated populations (Young *et al.* 2005, pp. 2405–2406).

A static model intended to describe the relationship between fish abundance and habitat is a tool for managers

implementing cutthroat trout restoration projects (Hildebrand and Kershner 2000, pp. 515–518). The model is especially useful in evaluating potential installation of artificial barriers to protect from nonnative fish invasion. Modeling indicated that a stream length of 3 km (2 mi) is required to support a population of 1,000 fish; 8 km (5 mi) supports 2,500 fish; and 17 km (10 mi) supports 5,000 fish. The model is not applicable in all situations; it incorporates several assumptions specifying that it is most relevant to isolated populations in streams less than 7 meters wide, and that food availability and habitat quality affect the relationship between fish abundance and stream length occupied. The relevance of the model for reintroduction and restoration of BCT populations should be carefully assessed, as small, isolated cutthroat trout populations have persisted for many years, e.g., above waterfalls or in desert basins. Lack of habitat to sustain a large population does not necessarily mean that a population is destined to go extinct (Hilderbrand and Kershner 2000, p. 517). Specific criteria for viable population size has not been developed for BCT.

Small, isolated populations are at greater risk from stochastic events such as fire, floods, and drought. However, the widespread geographic distribution of BCT conservation populations in numerous individual populations mitigates the potential of future catastrophic natural events to affect a large proportion of the populations. It is unlikely that a sufficient number of populations would be lost to affect the overall status of the subspecies.

Fisheries management agencies have the ability to maintain or reestablish BCT populations in areas where they are partially impacted or lost to natural catastrophic events. While not to be relied on for species conservation, restoration and reintroduction can be employed as tools in specific cases. For example, wildfire can present an opportunity to eliminate nonnative fishes that occur in BCT habitat, after which reestablishment of BCT can occur. BCT populations have been established in burned-over streams previously only occupied by nonnative trout, including Leeds Creek and South Ash Creek in the Pine Valley Mountains, and Birch Creek, a tributary to the Sevier River (Ottenbacher 2008, entire).

Active programs are in place to restore metapopulations, where possible, within the historic range of BCT in Utah and Nevada (Donaldson 2008, pp. 9–10; NDOW 2006, p. S–8). All GMUs currently have networked populations (metapopulations), and the strongest and largest networks occur in the Bear River and Northern Bonneville GMUs (May and Albeke 2005, p. 34).

A population health evaluation was conducted for all BCT conservation populations, based on four health indicators: Temporal variability (based on stream length), population size, population production potential (growth and survival rates), and population connectivity (May and Albeke 2005, pp. 44–49). The health evaluation indicated that 91 conservation populations (59 percent) occur in stream reaches of less than 10 km (6 mi) (May and Albeke 2005, pp. 44–49). Approximately 38 conservation populations (25 percent) occupy stream reaches between 10 km (6 mi) and 31 km (19 mi), and 24 populations (16 percent) occupy stream reaches of 32 km (20 mi) or more. Conservation populations include: 32 percent with at least 2,000 adult BCT; 25 percent with between 500 and 2,000 adult BCT; 22 percent with between 50 and 500 adult BCT; and 21 percent with fewer than 50 adult BCT.

Most of the conservation populations (81 percent) were moderately healthy in terms of growth and survival (population production potential), based on habitat quality, presence of nonnative trout, disease risk, land uses, and recovery actions. Composite scores of conservation population general health included: 7 percent high; 39 percent moderately high; 37 percent moderately low; and 17 percent low (May and Albeke 2005, pp. 44–49). Low to moderately low composite scores (54 percent of BCT conservation populations) were primarily a result of the number of small, isolated populations. Even though most populations (66 percent) are small and isolated, these populations are found in a minority of the total BCT conservation population habitat; 70 percent of total habitat has BCT conservation populations that are moderately or strongly connected. As is explained below, these isolated populations have been incorporated into the BCT Conservation Team's conservation strategies and allow for BCT conservation populations that are less susceptible to introgression, disease, and competition from nonnative fish.

The BCT Conservation Team developed two conservation strategies for BCT conservation and management (May and Albeke 2005, p. iii). One strategy emphasizes isolated populations because they are less susceptible to introgression, disease, and competition from nonnative fish. In addition, multiple populations distributed throughout a watershed reduce risk because the simultaneous loss of all populations within the watershed is unlikely. The other strategy emphasizes preserving and restoring metapopulations to provide genetic exchange and allow for larger populations. Within the current range of BCT, and within each GMU, both isolated populations and metapopulations are present, providing for success of both conservation strategies.

The best available information indicates that, while most BCT conservation populations occur in small stream reaches (59 percent), most have moderately healthy growth and survival rates (54 percent). In addition, 70 percent of total habitat includes populations that are moderately or strongly connected. Therefore, we find that BCT conservation populations are adequately healthy and will remain so in the foreseeable future.

Nonnative Fishes

Introduced nonnative fish are a potential threat to native cutthroat subspecies (UDWR 2000a, pp. 1–9; May and Albeke 2005, pp. 21–24). We address this potential threat factor by breaking it into three components: (1) Management practices that included stocking of nonnative fish; (2) competition of nonnative fish with BCT; and (3) hybridization of BCT with nonnative fish. We summarize all three of these components together in the summary of Factor E because they are interrelated.

Fisheries Management

Since the late 1800s, early pioneers and fisheries managers have implemented fish stocking programs that introduced nonnative salmonids into lake and stream habitats of BCT. Brook trout were introduced into waters in Utah as early as 1875, rainbow trout in 1883, and brown trout (*Salmo trutta*) possibly as early as 1895 (Popov and Low 1950, pp. 49–57; Sigler and Miller 1963, pp. 29–54). It is unknown exactly when nonnative cutthroat were introduced; in 1899, 11,000 adults and yearling cutthroat trout were sent to the Fish and Game Warden in Salt Lake City (Ravenel 1900, pp. 35–118). This delivery may have included several subspecies, including Yellowstone cutthroat trout (Sigler and Miller 1963, pp. 29–54). The earliest stocking records indicate large numbers of young nonnative fish were stocked for decades into accessible waters in an effort to restore or sustain a high-quality fishery (Holden *et al.* 1997, pp. 2–1 to 2–13).

In 1915, nearly 2 million cutthroat and more than 7 million other trout were planted in Utah waters alone within the Bonneville Basin (Cope 1955, pp. 89–93). Of the cutthroat stocked in 1915, 100,000 were from Utah, and the remainder were collected from Bear Lake and other productive cutthroat populations and stocked into less productive or exploited systems. From 1915 to 1952, more than 100 million cutthroat were planted, comprising about one-third of the total stocking effort in Utah; approximately 45 percent were imported from Utah, almost exclusively from Yellowstone Lake (Cope 1955, pp. 89–93, as reported from biennial Utah State Fish and Game Commission reports 1915–1952). Comprehensive stocking records from the turn of the century for the Bonneville Basin in Nevada, Idaho, and Wyoming are not readily available because most of these peripheral areas of the Bonneville Basin are remote and inaccessible. However, it has been suggested that settlers moved fish among drainages in remote areas like the Snake Valley and the Pine Valley Mountains in the mid-to late-1800s (Miller and Alcorn 1946, pp. 173 193; Popov and Low 1950, pp. 38–39; Behnke 1992, pp. 134–135). Fish transplanting among and across drainages, without oversight, consent, or record-keeping, was likely common in remote pioneer settlements.

Although many nonnative species were once stocked throughout Utah, salmonid species, particularly rainbow trout, Yellowstone cutthroat trout, and brook trout, comprise the greatest potential threat to BCT. Rainbow and Yellowstone cutthroat trout can interbreed with BCT (Busack and Gall 1981, pp. 948–950; Weigel *et al.* 2002, pp. 397–401), and brook trout can be a competitor for food sources (Peterson *et al.* 2004, p. 769) (see next section on Competition). Rainbow trout were regularly stocked into most cold, clear-water stream systems and impoundments throughout the Bonneville Basin (Duff 1988, pp. 121–127; Holden *et al.* 1997, pp. 2–5 to 2–13). Rainbow trout were commonly stocked at accessible sites, which was not always successful in establishing wild populations (those that naturally reproduce and recruit in the wild). As a result, annual stocking was necessary to maintain a sustainable fishery. Heavy annual stocking has taken place in some streams for more than a century. In the past 30 years, stocking was modified to prevent introduction of nonnative salmonids into waters with known pure populations of BCT in Utah (Holden *et al.* 1997, pp. 2–13 to 2–22).

Because of the nearby source of fry in Yellowstone Lake, Yellowstone cutthroat trout were readily available for stocking. Yellowstone and other subspecies of cutthroat trout were stocked into streams to supplement the declining native fishery. In some cases, (e.g., Bear Lake) substantial records exist of annual stocking of Yellowstone cutthroat trout and other species. Despite this stocking, Yellowstone cutthroat trout did not necessarily become established in all waters into which they were stocked, and BCT in some areas have resisted hybridization with and replacement by nonnative trout (e.g., Bear Lake) (Behnke 1992, p 137). Genetic information is not currently sufficient to clearly discern Yellowstone cutthroat trout from BCT in the Bear River drainage because of their recent evolutionary divergence; however, morphological characteristics are distinctive between BCT and Yellowstone cutthroat trout and can be used to determine hybridization where it is suspected (Behnke 1992, pp. 132–138; Shiozawa 2008, p. 1).

State fish and wildlife agencies no longer stock nonnative trout in BCT habitat, and are implementing strategies to minimize impacts to BCT from nonnatives, such as installing fish barriers, removing nonnative fish, and increasing nonnative fish bag limits.

Competition From Nonnative Fish

Nonnative trout are known to compete with BCT (Behnke 1992, p. 54). Brown trout can successfully compete with BCT (Budy *et al.* 2005, pp. xi–xiii), and brook trout can displace cutthroat trout when they occur in the same habitat (Peterson *et al.* 2004, p. 769). Nonnative fish are sympatric with BCT within currently occupied habitat in the four GMUs (May and Albeke 2005, pp. 27–28). Currently occupied BCT habitat includes 37 percent (1,365 km/848 mi) without nonnative fish, and 63 percent (2,466 km/1,532 mi) with nonnative fish. The majority of habitat with nonnative fish is in the Bear River (1,398 km/869 mi) and Northern Bonneville (1,024 km/636 mi) GMUs. Only 45 km (28 mi) in the Southern Bonneville GMU have nonnative fish. No nonnative fish exist within the West Desert GMU in BCT conservation population habitat.

BCT conservation populations represent approximately 87 percent of currently occupied habitat (the other 13 percent includes sport fish) (May and Albeke 2005, p. 31). Of the 153 BCT conservation populations, 97 (63 percent) have no interaction with nonnative fish, and 56 (37 percent) are sympatric with nonnative fish (May and Albeke 2005, p. 31).

Natural and human-made barriers protect some BCT populations from competition with nonnative fish. Rangewide, barriers assist in protecting 35 BCT conservation populations occupying 480 km (298 mi) of stream (Burnett 2008b, pp. 1– Barriers help protect populations from nonnative fish invasion, but negative effects, such as blocking fish movement and fragmenting habitat, should be assessed and balanced before installing barriers. Therefore, this strategy for managing nonnative fish is not appropriate for all native cutthroat populations.

Hybridization With Nonnative Fishes

The scientific criteria for describing and formally recognizing taxonomic species of fish are based almost entirely on morphological characters (Behnke 1992, pp. 7–11). The advent of molecular genetic techniques in the mid-1960s added an additional set of biological markers that are used to distinguish species and subspecies of native trout in the western United States. Most genetic analyses on native cutthroat trout have confirmed the evolutionary distinctness among species and subspecies that had been described taxonomically on the basis of morphology (Behnke 1992, pp. 7–11).

Cutthroat trout populations that are less than 10 percent introgressed with nonnative species (or other cutthroat subspecies) retain morphological, behavioral, and ecological characteristics of their nonintrogressed ancestors (UDWR 2000a, pp. 1–9). Individuals of a particular cutthroat trout subspecies can possess nuclear genes from another taxon, detectable only by molecular genetic techniques, while still conforming morphologically, behaviorally, and ecologically to the scientific taxonomic description of the parental native species (Busack and Gall 1981, pp. 948–950; Weigel *et al.* 2002, pp. 397–401).

We do not consider populations or individual fish conforming morphologically to the scientific taxonomic description of BCT to be a hybridization threat to BCT. Although such individuals may have a low frequency of genes from another taxon (less than 10 percent), we have found no information indicating that such individuals express behavioral, ecological, or life-history characteristics differently than BCT native to a particular geographic area. The frequency of genes from other taxons will likely remain low in BCT populations for several reasons: (1) In

some locations BCT likely can have an ecological advantage over nonnative fish because they have adapted over long time periods to their specific habitat; (2) stocking of nonnative trout in BCT habitat is no longer practiced by fish and wildlife agencies; and (3) 61 percent of BCT conservation populations are isolated by human-caused or natural barriers, protecting them from increasing numbers of nonnative trout (May and Albeke 2005, p. 37).

Some introgressed populations may be valuable to the overall conservation and survival of a species or subspecies (Campton and Kaeding 2005, pp. 1323–1324; USFWS 2003, pp. 46992–46993), because they can still express important behavioral, life history, or ecological adaptations of the indigenous population within a particular geographic area. BCT have evolved in varying environmental conditions in differing habitats across its range, and these conditions have likely influenced its behavioral and life history traits. For example, BCT with fluvial and adfluvial life-history strategies migrate up small streams to spawn, and BCT with a resident life-history strategy are able to conduct their entire life history (spawning, nursery/rearing, adult stage including overwintering) in headwater tributaries that provide all necessary life-history habitat types. Environmental conditions particular to a specific BCT population's ecological setting (e.g., latitude, elevation, temperature and precipitation regime) may allow for development of locally adapted traits that would justify preservation of a partially introgressed population. Maintaining unique life-history traits can outweigh the negative aspects of limited introgression. Thus, agencies should carefully evaluate the long-term conservation implications of strategies for managing introgressed BCT populations within the range of the BCT (USFWS 2003, pp. 46992–46993; Campton and Kaeding 2005, pp. 1323–1324), as different strategies may be appropriate for different populations.

No standards exist that define exact thresholds for acceptable levels of hybridization in cutthroat trout; however, we assessed all relevant scientific and commercial information available in order to arrive at generally applicable standards. These standards are applicable to other species of cutthroat trout we have assessed, including the Yellowstone (71 FR 8818, February 21, 2006) and Colorado River (72 FR 32589, June 13, 2007) cutthroat trout subspecies. Similar standards were applied to the Westslope cutthroat trout (WCT) (68 FR 46989, August 7, 2003); however, specific research was conducted indicating that WCT 20-percent introgressed with rainbow trout were indistinguishable morphologically from nonintrogressed WCT (Weigel *et al.* 2002, pp.397–401). Species-specific research comparing morphological characteristics to genetic introgression thresholds has not been conducted on other cutthroat subspecies; therefore, we used the more conservative threshold of 10 percent to define BCT conservation populations.

When BCT are sympatric with rainbow trout and nonnative subspecies of cutthroat trout, introgressed populations can occur, and because of this, researchers have studied the genetic status of BCT. These studies have measured levels of introgression in the BCT in targeted areas of its range, but have not, additionally, measured the morphological characteristics present at varying levels of introgression. The rangewide status report includes a summary of BCT genetic status (May and Albeke 2005, pp. 21–24).

Genetic testing was conducted in more than 784 km (487 mi) of BCT occupied habitats (20 percent of occupied habitat) (May and Albeke 2005, pp. 21–24). This research was conducted specifically in populations that appeared to be typical of the BCT phenotype; while results help elucidate the level of introgression in BCT, they cannot be used to summarize rangewide introgression levels. Test results showed no evidence of introgression in samples from 611 km (411 mi) of occupied habitat (17 percent of occupied habitat). An additional 1,215 km (755 mi) of occupied habitat (32 percent of occupied habitat) has populations suspected to be genetically unaltered, based on the absence of introduced hybridizing species and of stocking records for hybridizing species. The BCT Coordination Team has classified these as conservation populations. Hybridized fish occur in approximately 122 km (76 mi) of stream habitat (4 percent of occupied habitat). An additional 1,831 km (1,138 mi) of habitat (48 percent of occupied habitat) contains fish that are potentially hybridized, based on the presence of nonnative hybridizing species or records indicating past stocking of nonnative hybridizing species.

Researchers also assessed the genetic contamination risk, based on proximity and accessibility of rainbow trout and nonnative cutthroat trout, for the 153 BCT conservation populations (May and Albeke 2005, p. 37). A low genetic risk was found in BCT populations (94 populations; 61 percent) where a barrier provides complete blockage to upstream fish movement of introduced hybridizing species. A moderately low genetic risk was found in BCT populations greater than 10 km (6 mi) from hybridizing species or subspecies, and a moderately high risk was found in BCT populations within 10 km (6 mi) of hybridizing species or subspecies (27 populations; 18 percent). A high risk rating was found in BCT populations (32 populations; 21 percent) sympatric with hybridizing species in the same stream segment. Of the populations that were rated with low risk of genetic contamination, 87 (93 percent) were identified as being isolated populations.

Summary of Nonnative Fishes

Despite the presence of nonnative fish species sympatric with BCT, we find that stocking, competition, and hybridization do not pose significant threats to BCT, because: (1) In some locations BCT likely can have an ecological advantage over nonnative fish because they have adapted over long time periods to their habitat; (2) well-distributed core populations of BCT persist in streams with nonnative fish; (3) 61 percent of BCT populations are isolated from nonnative fish by natural or constructed barriers; and (4) stocking of nonnative fish no longer occurs in waters with BCT conservation populations. In addition, programs are being implemented to remove nonnative trout, through mechanical or chemical means, from BCT waters in all four States (NDOW 2006, p. S–22; IDFG 2008, pp. 9–10; Donaldson 2008, p. 5; WGFD 2008, p. 10). In Utah, between 2001 and 2007, nonnative fish removal was conducted on more than 80 km (50 mi) of BCT streams (Donaldson 2008, p. 5).

Groundwater Pumping

Multiple filings for groundwater withdrawal from both the carbonate-rock and alluvial aquifers in the Great Basin are currently in place within the historic range of BCT populations in the West Desert GMU. Southern Nevada Water Authority (SNWA) has applied to the BLM for issuance of rights-of-way to construct and operate a system of regional water supply and conveyance facilities. The project would include conveyance of up to 24,384 hectares per meter (ha-m) (200,000 acre-feet per year (ac-ft)) of groundwater—20,360 ha-m (167,000 ac-ft) by SNWA with the remaining capacity provided for Lincoln County Water District from six hydrographic basins (SNWA 2007, p. 1–1). The groundwater that SNWA intends to convey would be from both existing and future permitted water rights in hydrographic basins of the Great Salt Lake Desert Regional Flow System

(Nevada and Utah) and White River Flow System (Nevada).

SNWA's Groundwater Development (GWD) Project includes construction and operation of groundwater production wells, water conveyance facilities, and power facilities. The proposed production wells and facilities would be located on public lands managed by BLM in Nevada. No facilities are planned in Utah (SNWA 2007, p. 1–1).

The Nevada State Engineer issued a ruling on April 16, 2007, approving a major portion of the SNWA groundwater rights applications for the Spring Valley hydrographic basin. SNWA can pump 4,877 ha-m (40,000 ac-ft) annually from the basin, with the potential for an additional 2,438 ha-m (20,000 ac-ft) based on results of 10 years of monitoring that will be conducted for the initial pumping allocation (NSE 2007, p. 56). The Nevada State Engineer hearings on SNWA water rights applications in Snake Valley are projected for fall 2009. In addition to the water awarded to SNWA in Spring Valley, filings for 6251 ha-m (50,680 ac-ft) in Snake Valley are pending.

New, large-volume filings in the State of Utah include: Millville Irrigation Co.—15172 ha-m (123,000 ac-ft) in Wah Wah Valley; the Confederate Tribes of the Goshute Reservation—6168 ha-m (50,000 ac-ft) in Deep Creek Valley; Central Iron County Water Conservancy District—4564 ha-m (37,000 ac-ft) in Hamlin, Pine, and Wah Wah Valleys; private parties in Snake Valley—1294 ha-m (10,490 ac-ft); and the State of Utah School and Institutional Trust Lands—1105 ha-m (8960 ac-ft) in Snake Valley (UGS 2008, entire). We did not receive information detailing future plans for development on the filings of these Utah water rights.

The SNWA GWD Project is anticipated to be completed and may begin pumping in January 2014 (SNWA 2007, pp. 4–11). Prior to its completion, baseline data collection and research on biologic and hydrologic impacts will be completed and an intensive monitoring program will be put in place to monitor and mitigate for Project effects. At the present time, SNWA anticipates that ultimately between 110 and 200 groundwater production wells may be required for the GWD Project. However, the specific locations of these wells are dependent upon future rulings from the Nevada State Engineer, exploratory drilling results, agency agreements, and results of actual groundwater pumping. SNWA anticipates that it may take up to 20 years or more to site and install all of the groundwater production wells for the project (SNWA 2007, p. 2–1).

A great deal of uncertainty exists regarding the long-term effects of the groundwater pumping for aquifers and surface waters in the Great Basin. However, well locations will generally be sited in valley bottoms and be withdrawing water from deep carbonate and alluvial aquifers. BCT populations are generally located in headwater streams in the West Desert GMU, and it is anticipated that direct effects to BCT populations and their habitat will be minimal or nonexistent. Additionally, SNWA entered into a stipulation with the Department of the Interior regarding SNWA's GWD Project water withdrawals in the Spring Valley hydrographic basin. The goals of this stipulation include avoidance of any effects to water-dependent ecosystems within the boundaries of Great Basin National Park and avoidance of unreasonable adverse impacts to water-dependent ecosystems in the remainder of the project area. This will be accomplished through hydrologic and biologic monitoring, management, and mitigation plans designed to identify, avoid, and mitigate effects of groundwater withdrawal on dependent ecosystems (SNWA 2008, p. 15).

It has been hypothesized that water development in two areas of the GWD Project, the Spring Valley and Snake Valley Basins, could have indirect effects to BCT habitats in the West Desert GMU. Groundwater pumping could result in the lowering of valley water tables and spring discharge rates and result in drying and desiccation of wetland and riparian phreatophytic (deep rooted) vegetation. This could likely result in an increase in fire frequency in Great Basin valley floors that are adjacent to drainages that have BCT populations in headwater streams. Riparian vegetation in drainages of the Snake and Deep Creek ranges where BCT occur could become more susceptible to these fires. However, there is a great deal of uncertainty as to whether this scenario will occur or if it will have impacts to BCT as no information exists regarding what the actual effects of pumping would be to valley vegetation or fire frequency. At this time, we know of no information that indicates to us that groundwater pumping in the West Desert GMU is significantly affecting BCT now or into the foreseeable future.

Summary of Factor E

Despite the potential for increased risk to BCT populations resulting from future climate change, we found no scientific and commercial information leading us to conclude that climate change is currently a significant threat to BCT conservation populations, or will become so within the foreseeable future.

We assessed the potential risks to BCT conservation populations associated with fragmentation and isolation of small BCT conservation populations, including stochastic, catastrophic, natural events, and find that they do not now, nor will in the foreseeable future, significantly threaten the status of BCT to the extent that listing under the Act as a threatened or endangered species is warranted.

We assessed the potential threats posed by nonnative species, including historical stocking, competition, and introgressive hybridization with rainbow trout or other cutthroat subspecies. Nonnative fish species exist in 63 percent of occupied BCT habitat. However, 61 percent of BCT populations are isolated from nonnative fish by natural or constructed barriers, and stocking of nonnative fish no longer occurs in BCT waters. These factors, combined with the current distribution of conservation populations, indicate that nonnatives do not currently affect the status of BCT to the extent that listing under the Act as a threatened or endangered species is warranted. In addition, management practices focused on removing and preventing introduction of nonnative fish within BCT habitat, provide reasonable assurance that this potential threat factor will not increase within the foreseeable future.

Foreseeable Future

In the context of the Act, the term ''threatened species'' means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term ''endangered species'' means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not define the term foreseeable future; however, we consider it to be affected by the biological and demographic characteristics of the species, as well as our ability to predict or extrapolate the effects of threats facing the species in the future. Quantification of the time period corresponding to the foreseeable future is challenging because it necessitates making predictions about inherently dynamic political, legal, and social mechanisms that influence the degree and immediacy of potential threats to the species.

For the purpose of this finding, the ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated, such that reliable predictions can be made concerning the status of the species in the future. Although we have found some threats to BCT are ongoing at low levels and that various localized areas may be affected by specific problem activities, as discussed in the Summary of Factors section, we did not find any information to suggest that threats will rise to levels that would significantly threaten BCT rangewide to the extent that the species would warrant listing under the Act.

Although we did not find any information to allow us to reliably predict that threats would increase significantly in the future, predicting and managing for the effects of potential future threats will be facilitated by the BCT conservation plans that are in place at the State and rangewide level (see Conservation Actions section under Factor D). Monitoring of BCT population numbers and habitat conditions is included in the State and rangewide conservation plans and any significant decreases in BCT populations or habitat conditions should be identified and effectively mitigated by using the methods developed in these conservation plans. State and Federal agency participation in BCT conservation plans is voluntary; however, State plans are typically in place indefinitely, or have a term of agreement for 5–10 years with renewal provisions for a similar time period. The rangewide BCT conservation agreement was renewed in 2008 for 10 years with the commitment that it would be extended for an additional 10 years upon expiration. In addition, the States within the range of the BCT have an established record of managing for the species (see Factor D). We find that the BCT conservation plans will be in place and operating for at least 20 years. We consider the status of the BCT to be reasonably predictable with established management practices in place because many of the threats to the species are effectively mitigated by these practices; outside the timeframe of the conservation plans, we are unable to make reliable predictions regarding the threats to the species and the effect of those threats on the status of the species. Therefore, the foreseeable future for BCT is 20 years with respect to most threats.

Our ability to predict the effects of future threats is limited to our knowledge of the timeframe of the threats potentially facing the BCT, and the conservation activities taking place to address them. We assessed activities that could potentially affect BCT populations under the Summary of Factors section. Livestock grazing was a concern in the early 1900's, but recent management practices appear to have reduced effects to watersheds, and these practices are expected to continue for at least 20 years. Road construction or maintenance, timber harvest, and water diversions and depletions are expected to be managed consistently within at least the next 20 years, and are not expected to result in a downward trend in BCT population status. The foreseeable future for oil and gas development is possibly shorter than for other threats (i.e., less than 20 years), because this threat is not specifically mitigated by conservation actions identified in the State conservation plans; however, oil and gas developments are mostly outside the historic range of the BCT, and are not creating a downward trend in population status. Recreational angling is currently regulated, and no downward trend in population status exists due to this activity. Disease in BCT is being mitigated through conservation actions that are expected to continue for at least the next 20 years. Factors related to the presence of nonnative fish species, such as predation, competition, and genetic introgression, are being mitigated through conservation actions that are expected to continue for at least the next 20 years.

Climate change projections are considered fairly robust for the current century on a continental scale, but, as discussed above, we cannot yet make reliable predictions as to the magnitude or timing of likely temperature increases within the range of the BCT. Therefore, for the purposes of analyzing the threat of climate change to the BCT, the future is only foreseeable to the extent of our determination that some additional temperature increase is likely. We cannot determine that the BCT will become endangered due to an unquantifiable amount of temperature increase, particularly given the BCT's apparent adaptability to a relatively broad spectrum of habitat conditions, although we recognize that it is possible that climate change will eventually have more significant impacts.

We have determined that the immediacy and magnitude of the above-mentioned threats will not significantly degrade the 80 percent of BCT habitat that is currently in fair to excellent condition within the next 20 years, in part due to regulatory mechanisms and management practices (no nonnative stocking, combined with nonnative removal programs) that have been implemented and shown to be effective by State and Federal management agencies, and that we have reasonable assurance will continue for at least the next 20 years.

Significant Portion of the Range

As required by the Act, we considered the five potential threat factors to assess whether the BCT is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of a species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then we list the species in its entirety. For instance, if the threats to a species are directly acting on only a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list the entire species.

Based on the best available scientific and commercial information available addressing BCT distribution and potential threats, especially the rangewide status report for BCT (May and Albeke 2005, entire), we find that the BCT is not likely to become endangered in the foreseeable future throughout all of its range.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (DOI 2007). A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

We evaluated the BCT throughout its current range to determine if any portion is likely to become threatened or endangered within the foreseeable future, and if so, whether that portion is important to the conservation of the species because it contributes meaningfully to the resiliency, representation, or redundancy of the species.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify portions that warrant further consideration, we determine whether

there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify portions of the range that warrant further consideration, we determine whether the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the significance question first, or the status question first. If we determine that a portion of the range is not significant, we need not determine whether the species is threatened or endangered there; similarly, if we determine that the species is not threatened or endangered in a portion of its range, we need not conduct significance analysis.

The concepts of ''resiliency,'' redundancy,'' and ''representation'' are indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species overall. Therefore, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

We assessed threats at the watershed-based GMU level, because standardized fish monitoring methods and BCT management methods are watershed based. The four GMUs are geographically and hydrologically distinct; they also delineate BCT populations in logical biogeographical and taxonomic subgroups. Based on the best available scientific and commercial information regarding the abundance of BCT, and our assessment of threats to the species, throughout its current range, we find that no individual GMU is likely to become threatened or endangered in the foreseeable future because threats are evenly distributed throughout the range of the species.

Further subdividing of BCT populations or habitat into smaller portions than GMUs would require unscientific methodology. In addition, smaller subdivisions of populations would not, individually, be significant to the subspecies. We find that areas smaller than the GMU would not meaningfully contribute to the resilience, redundancy, or representation of the BCT. Losses of habitat or species from areas smaller than the GMU level would not threaten the entire GMU, and a sufficient number of GMUs exist to ensure species redundancy and resiliency. No significant ecological differences exist at levels smaller than the GMUs to affect representation of the subspecies. Threats are similar in all four GMUs, and no individual GMU has threats of a magnitude that the subspecies is threatened or endangered within it. Therefore, we have determined that no significant portion of the BCT range is in danger of extinction or likely to become so within the foreseeable future.

Distinct Vertebrate Population Segment (DPS)

Pursuant to section 4(a)(1) of the Act, we must determine whether any species is an endangered species or a threatened species because of any of the threat factors identified therein. Section 3(15) of the Act defines ''species'' to include ''any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature'' (16 U.S.C. 1532 (16)). To interpret and implement the distinct vertebrate population portion of the definition of a species under the Act and congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries) published, on February 7, 1996, an interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (DPS Policy; 61 FR 4722). The policy allows for more refined application of the Act that better reflects the conservation needs of the taxon being considered, and avoids the inclusion of entities that may not warrant protection under the Act.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for additions to the List of Endangered and Threatened Wildlife and Plants, reclassification, and removal from the List. They are: (1) Discreteness of the population segment in relation to the remainder of the taxon; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., whether the population segment is, when treated as if it were a species, endangered or threatened). Discreteness refers to the isolation of a population from other members of the species and we evaluate this based on specific criteria. If a population segment is considered discrete, we must consider whether the discrete segment is ''significant'' to the taxon to which it belongs by using the best available scientific information. If we determine that a population segment is discrete and significant, we then evaluate it for endangered or threatened status based on the Act's standards.

We assessed threats at the watershed-based GMU level, because standardized fish monitoring methods and BCT management methods are watershed based. The four GMUs are geographically and hydrologically distinct; they also delineate BCT populations in logical biogeographical and taxonomic subgroups. In addition, each GMU is significant to the continued existence of the species. However, based on the best available

scientific and commercial information regarding the abundance of BCT, and our assessment of threats to the species, throughout its current range, we find that no individual GMU is likely to become threatened or endangered in the foreseeable future because threats are evenly distributed throughout the range of the species.

The four GMUs meet the first two criteria in the DPS policy, but the conservation status of each is stable. Further subdividing of BCT populations or habitat into smaller portions than GMUs would require unscientific methodology. In addition, while it is possible that smaller units would meet the discreteness criteria in the DPS policy, it is unlikely that any smaller area would be significant to the subspecies.

Finding

This status review includes substantial information that was not available at the time of the 2001 status review and 12-month finding (66 FR 51362), in particular, the information obtained from May and Albeke (2005). We requested a peer review of May and Albeke (2005); peer reviews were conducted by five recognized cutthroat trout experts who found that the document provided sound scientific data on the rangewide status of BCT.

Populations of BCT have been greatly reduced over the last 200 years, with much loss occurring in the late 19th and early 20th century (Behnke 1992, pp. 132–138). However, recent surveys have shown that the numbers of BCT populations have increased in the last 3 decades and the subspecies remains widely distributed throughout a large geographic area. We attribute the historic decline in the distribution of BCT to the introduction of nonnative sport fish into BCT habitat that began in the late 1800s. The wide distribution of rainbow trout and nonnative cutthroat trout caused problems through competition, hybridization, and predation. In some places, introduced fish expanded and colonized new habitat, and formed naturally reproducing populations that occupy the former, and in some cases current, range of BCT.

We found no evidence of continuing declines in the overall distribution or abundance of BCT during the last several decades. A substantial increase in the number of known populations has been documented (May and Albeke 2005, pp. 63–64), and habitat quality is good to excellent in over half (52 percent) of BCT habitat, and fair to excellent in 80 percent of BCT habitat. Management agencies have focused on the protection and restoration of conservation populations of BCT in all currently occupied watersheds. Additional focus is on habitat restoration activities and fisheries management actions designed to benefit BCT. Some recognized threats to BCT, such as excessive harvest by anglers and stocking of nonnative fishes, are now regulated or discontinued so that they no longer threaten the continued existence of BCT. Conservation actions have resulted in improved population levels in some areas (Ottenbacher 2008, entire).

At least 153 BCT conservation populations collectively occupy about 3,316 km (2,061 mi) of stream habitat in 22 watersheds (HUCs) in Utah, Idaho, Nevada, and Wyoming. These populations qualify as conservation populations of BCT under standards developed by the States that are consistent with our assessment of best available science. Conservation populations are distributed throughout the four GMUs within the historic range of the BCT. Of the 153 conservation populations identified by May and Albeke (2005, p. 31), about 71 (46 percent) are core populations comprised of nonintrogressed BCT (greater than 99 percent genetic purity).

Hybridization, mostly with nonnative rainbow trout and nonnative subspecies of cutthroat trout that have established self-sustaining populations in many areas in the range of BCT, has historically been an issue of management concern. However, current State management has greatly reduced opportunities for further genetic introgression. States continue to monitor introgression in BCT throughout its range. We find that the limited presence of genetic material from other fish species or subspecies (typically less than 10 percent) is not a threat to BCT conservation populations. Populations or individual fish with a low level of introgression are morphologically, ecologically, and behaviorally indistinguishable from nonintrogressed (i.e., pure) BCT. Slightly introgressed BCT populations, with low amounts of genetic introgression detectable only by molecular genetic methods (i.e., conservation populations), are an important component of BCT conservation. Genetically pure populations (71 core populations) are distributed throughout the current range of BCT. State and Federal agencies are implementing strategies and actions to protect BCT populations from invasion of nonnative species or subspecies that may interbreed with BCT.

Brook trout, brown trout, and rainbow trout compete with BCT where they are sympatric. Managers are monitoring competition from nonnative fish in BCT waters, and implementing ongoing management strategies and actions to curtail it. However, 1,365 km (848 mi) of habitat occupied by BCT conservation populations are free of nonnative trout.

The BCT persists as a widely distributed subspecies; 153 conservation populations exist throughout the historic range, and a metapopulation structure exists in each GMU. Nonintrogressed BCT core populations exist in habitats secure from nonnative trout and thus are protected from potential hybridization throughout the subspecies' historic range. Although distribution of BCT has been reduced from historic levels (the subspecies now occupies about 35 percent of historic habitat), the 2005 rangewide status report on BCT documented the continued existence of conservation populations throughout its current range, and that 80 percent of occupied habitat is in fair to excellent condition.

We have thoroughly assessed the current status of BCT, the mitigation of existing threats, and the existence of laws and regulations that minimize adverse effects of land management and other activities on BCT. We find that the magnitude and imminence of threats do not indicate that the subspecies is in danger of extinction, or likely to become endangered, throughout all or any significant portion of its range, within the foreseeable future. Therefore, we find that listing the BCT as a threatened or an endangered species under the Act is not warranted at this time.

References Cited

A complete list of all references cited herein is available upon request from the Utah Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this document is the staff of the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 29, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–20674 Filed 9–8–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0098; 92220–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Lahontan Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) from the Federal List of Threatened and Endangered Wildlife (List) under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that removing Lahontan cutthroat trout from the List may be warranted. Therefore, we will not initiate a status review in response to this petition. However, we are currently conducting a 5-year review of this species under section 4(c)(2)(A) of the Act. This review was initiated on February 14, 2007, and will consider information that has become available since the last status review. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Lahontan cutthroat trout or its habitat at any time.

DATES: The finding announced in this document was made on September 9, 2008. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/nevada.* Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone (775) 861–6300; facsimile (775) 861–6301. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Bob D. Williams, Field Supervisor, or Selena Werdon, Assistant Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES**). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

This finding is based on the information included in and with the petition and information available in our files at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations in 50 CFR 424.14(b), our review is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold. Our standard for substantial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). In making this finding, we consider whether the petition: (1) Clearly indicates the administrative action recommended; (2) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities and maps (50 CFR 424.14(b)(2)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that that the original data used for classification of the species as endangered or threatened were in error.

We received a petition dated December 18, 2006, from Dynamic Action on Wells Group, Inc. (DAWG) requesting that the Lahontan cutthroat trout be removed from the List. The submission clearly identified itself as a petition and included the requisite identification information of the petitioners, as required in 50 CFR 424.14(a). This notice constitutes our 90-day finding on the petition.

Previous Federal Action

On October 13, 1970, we listed Lahontan cutthroat trout as endangered under the Endangered Species Conservation Act of 1969 (Pub. L. 91–135, 83 Stat. 275) (35 FR 16047). The species was subsequently listed under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). On July 16, 1975, we reclassified Lahontan cutthroat trout from endangered to threatened (40 FR 29863). We also published findings on two previous petitions to delist populations of the Lahontan cutthroat trout, one to delist Lahontan cutthroat trout in the Truckee River and Pyramid Lake (51 FR 29671; August 20, 1986) and the other to delist Lahontan cutthroat trout in the Humboldt River Drainage Basin in Nevada (59 FR 28329; June 1, 1994), neither of which resulted in a determination that delisting was warranted.

Species Information

Range and Habitat

Historically, Lahontan cutthroat trout were found in a wide variety of cold-water habitats including large, terminal, alkaline lakes (e.g., Pyramid and Walker Lakes); alpine lakes (e.g., Lake Tahoe and Independence Lake); slow, meandering rivers (e.g., Humboldt River); mountain rivers (e.g., Carson, Truckee, Walker, and Marys Rivers); and small headwater tributary streams (e.g., Donner and Prosser Creeks). Generally, Lahontan cutthroat trout occur in cool flowing water with available cover of well-vegetated and stable stream banks, in areas where there are stream velocity breaks, and in

relatively silt-free, rocky riffle-run areas (Service 1995, p. 19).

The Lahontan cutthroat trout is endemic, or native, to the Lahontan Basin of northern Nevada, eastern California, and southern Oregon (Service 1995, pp. 3–4). In 1844, there were 11 lake-dwelling populations of Lahontan cutthroat trout and 400 to 600 stream-dwelling populations in over 5,794 kilometers (km) (3,600 miles) of streams within the major basins of Pleistocene Lake Lahontan (Service 1995, p. 6). Lahontan cutthroat trout currently occupy between 123 and 129 streams within the Lahontan Basin (Service 1995, p. 7). The species is currently found in five historic lakes including Pyramid Lake (Service 2003a, pp. 41–43), Walker Lake (Service 2003b, pp. 18–21), Fallen Leaf Lake (Service 2003a, pp. 41, 58), Independence Lake (Rissler *et al.* 2006, pp. 25–27, 34), and Summit Lake (Service 1995, pp. 14–15). Lahontan cutthroat trout are also found in numerous lakes and streams within the Sierra Nevada and elsewhere outside their historic range (Service 1995, pp. 7, 9, 11–13, 18–19, E–9, E–10).

Reproduction

Lahontan cutthroat trout inhabit lakes and streams but are obligatory stream spawners. Small, intermittent, tributary streams and headwater reaches are sometimes used as spawning sites (Coffin 1981, p. 41; Trotter 1987, pp. 129–132). Spawning generally occurs from April through July, depending upon stream flow, elevation, and water temperature (La Rivers 1962, p. 287; McAfee 1966, p. 227; Lea 1968, pp. 68–69; Moyle 2002, p. 291). Fecundity of 600–8,000 eggs per female has been reported for lacustrine (lake-dwelling) populations (Lea 1968, pp. 80–83; Cowan 1983, p. 16; Sigler *et al.* 1983, p. 17; Moyle 2002, p. 291), while only 100–300 eggs were found in females collected from small Nevada streams (Coffin 1981, p. 40). Eggs are deposited in small gravels within riffles or pool crests (Service 1995, p. 21). Eggs generally hatch within 4–6 weeks, depending on water temperature, and fry emerge 13–23 days later (Lea 1968, p. 69; Moyle 2002, p. 291).

Genetics

The petitioners provided some information about the genetic structure of Lahontan cutthroat trout. They state that Lahontan cutthroat trout populations in the Lahontan Basin are not genetically distinct and that recent studies to identify Lahontan cutthroat trout differentiation among Lahontan sub-basins failed to find statistically significant variation or asserted sub-basin distinctions without adequate evidence (DAWG 2006, p. 5). However, the petition does not clearly articulate how this information supports their claim that Lahontan cutthroat trout should be delisted (*i.e.*, the genetics information does not contribute to a ''detailed narrative justification for the recommended measure'' (50 CFR 424.14(b)(2))).

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated information presented in the petition and its supporting information in the context of the above listed five factors to determine whether the petition presented substantial information indicating that delisting the species under the Act may be warranted. Based on information in the petition and other information available in our files, our evaluation is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioners claim that two conditions necessary to delist Lahontan cutthroat trout have been met, one being habitat conditions in the Pyramid Lake-Truckee River Basin (the other condition necessary to delist asserted by the petitioners is discussed under other natural or manmade factors affecting its continued existence (Factor E)). The petitioners state that most diversions from the lower Truckee River have ended, obstructions to Lahontan cutthroat trout spawning in the Truckee River have been removed, and Pyramid Lake has increased in volume and elevation. The petitioners also state that the Truckee River has generated sufficient flows to maintain a viable Lahontan cutthroat trout population in Pyramid Lake, and that the Truckee-Pyramid Basin could form a potential, naturally reproducing, self-sustaining Lahontan cutthroat trout fishery. However, the petition provides no discussion, citations, or other sources of more detailed information to support their claim that the threat has been eliminated.

In addition to the lack of supporting information in the petition, the petitioners misstate information in the final rule reclassifying the species from endangered to threatened (40 FR 29863). The petitioners assert that in the final rule we determined that Lahontan cutthroat trout is a threatened species because ''water diversions from the Truckee River had lowered the water level of Pyramid Lake, silted up the mouth of the Truckee River at its entry into the lake, and eliminated much of the Lahontan cutthroat trout annual spawn up the River from Pyramid Lake'' (DAWG 2006, pp. 3–4). The petitioners also state that Walker Lake ''was not mentioned as evidence 'pertinent to the determination' '' (DAWG 2006, p. 4). However, the petition misinterprets the final rule. The final rule stated that ''water diversions within its native range continue to be a threat'' and noted that this was ''especially evident'' in Pyramid Lake (40 FR 29864). While the final rule did not specifically mention Walker Lake, our reference to water diversions within the native range of Lahontan cutthroat trout encompassed the Walker River drainage and Walker Lake, as well as the other streams and lakes discussed above in the Habitat and Range section. While improved habitat conditions in the Truckee River and Pyramid Lake would contribute to recovery of Lahontan cutthroat trout, amelioration of the threat from water diversion also would involve areas within the native range of Lahontan cutthroat trout in addition to the Truckee River and Pyramid Lake. Thus, the petitioners' second assertion that conditions necessary to delist Lahontan cutthroat trout have been met is also based on a misinterpretation of the final rule.

To summarize, the petition lacks information to support its assertion that threats from diversions in the Truckee River have been eliminated, and is incorrect in its assumptions and interpretations of the final downlisting rule. Therefore, we find the petition does not present substantial information demonstrating that delisting Lahontan cutthroat trout across all or a significant portion of its range may be warranted at this time due to a lack of threats from any present or threatened destruction, modification, or curtailment of the species' habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not provide information regarding the effects of overutilization for commercial, recreational, scientific, or educational purposes on Lahontan cutthroat trout. A review of information in our files does not suggest that overutilization for commercial, recreational, scientific or educational purposes currently threatens Lahontan cutthroat trout. However, we will analyze all available information with respect to this factor in our 5-year review under section 4(c)(2) of the Act, which was initiated on February 14, 2007 (72 FR 7064).

C. Disease or Predation

The petition did not provide information regarding the effects of disease or predation on Lahontan cutthroat trout. However, information in our files suggests that there may be threats to Lahontan cutthroat trout from disease or predation. We will analyze all available information with respect to this factor in our 5-year review under section 4(c)(2) of the Act, which was initiated on February 14, 2007 (72 FR 7064). Therefore, we conclude that there is no substantial scientific or commercial information to indicate that delisting Lahontan cutthroat trout may be warranted due to lack of threats from disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition does not present any information pertaining to the inadequacy of existing regulatory mechanisms. However, a review of information in our files suggests that inadequacy of existing regulatory mechanisms may be a concern as it relates to maintenance of habitat conditions for Lahontan cutthroat trout. We will analyze all available information with respect to this factor in our 5-year review under section 4(c)(2) of the Act, which was initiated on February 14, 2007 (72 FR 7064).

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioners referred to the final rule downlisting the Lahontan cutthroat trout from endangered to threatened, stating that the final rule indicated ''introduced Brook trout were strong competitors for food and space, and Rainbow trout were hybridizing with the Lahontan cutthroat trout throughout the Lahontan Basin'' (DAWG 2006, p. 4). This is an accurate representation of the information presented in the final rule (40 FR 29864).

The petitioners also stated that the final rule listing Lahontan cutthroat trout as threatened indicated that ''the explicit resolution of the competition/hybridization problem was 'regulated taking by sport-fishing' and that 'sport-fishing was explicitly mentioned as the method for reducing competition, hybridization, and overcrowding in streams' '' (DAWG 2006, p. 4). With respect to the idea that sport-fishing will reduce competition from and hybridization with nonnative trout, the petitioners misinterpret the information presented in the final rule. The final rule indicates that (1) Lahontan cutthroat trout would benefit from regulated taking by sport-fishing because stocking had led to most suitable streams reaching carrying capacity, and (2) sport-fishing ''is an acceptable method of preventing overpopulation which could injure a species by taxing the species' habitat'' (40 FR 29864). Therefore, the final rule acknowledges the role of sport-fishing in reducing overpopulation in stocked areas, but it does not indicate that sport-fishing for Lahontan cutthroat trout ameliorates the threat of competition from and hybridization with nonnative trout. The petitioners do not present any information to indicate that threats posed by the presence of these nonnative species have been ameliorated. In addition, the petitioners provide no data or other information indicating that sport-fishing will have the effect of ameliorating those threats. They state that ''the competition and hybridization experienced by the Lahontan cutthroat trout throughout the Lahontan Basin has been attenuated by the Nevada Department of Wildlife through regulated taking by sport-fishing'' (DAWG 2006, p. 6), without providing substantive support for the statement. Therefore, without any additional information to evaluate the validity of this statement, we find that the petition does not present substantial information indicating that delisting of the Lahontan cutthroat trout across all or a significant portion of its range may be warranted due to a lack of threats from other natural or manmade factors affecting the species' continued existence.

Finding

We have reviewed the petition and supporting information provided with the petition under 50 CFR 424.14(b)(2) and the Act, including information in the final rule listing Lahontan cutthroat trout as threatened. First, our review indicates that the fundamental argument for delisting presented in the petition was largely based on misinterpretation of information in the final rule downlisting Lahontan cutthroat trout from endangered to threatened (40 FR 29863), specifically with respect to the extent of the threat from water diversions, and with respect to any role sport-fishing for Lahontan cutthroat trout may play in ameliorating the threat of competition and hybridization with nonnative trout. This resulted in incorrect information being presented by the petitioners to support their claims. Second, the petitioners did not provide substantive discussion, data, citations, or other information supporting their statements suggesting that the threats identified in the final listing rule have been ameliorated. Specifically, the petition did not discuss or cite substantive data or other information supporting the notion that water diversions are no longer a threat to Lahontan cutthroat trout in the Truckee River and Pyramid Lake and that competition and hybridization with nonnative trout have been controlled by sport-fishing. The petition also discussed genetic differentiation of Lahontan cutthroat trout within the Lahontan Basin, but it did not clearly articulate the relevance of the information to delisting of the subspecies.

Considering the information in the petition under the Act and our regulations as stated above, we find that the petition (1) did not contain a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species and any threats faced by the species; (2) did not provide information regarding the status of the species over all or a significant portion of its range; and (3) was not accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). Specifically, the supporting documentation that was provided was not appropriate to support the fundamental rationale for the petitioned action. Therefore, we find that the petition does not present substantial information demonstrating that delisting Lahontan cutthroat trout across all or a significant portion of its range may be warranted at this time. We encourage interested parties to continue to gather and provide data that will assist with the conservation of Lahontan cutthroat trout.

References Cited

A complete list of all references cited in this document is available, upon request, from the Nevada Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are staff of Nevada Fish and Wildlife Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 19, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–20673 Filed 9–8–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 73, No. 175

Tuesday, September 9, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 3, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Equal Opportunity Compliance Review Reporting Tool.

OMB Control Number: 0596-NEW.

Summary of Collection: All Federal agencies and the entities receiving Federal financial assistance are prohibited from discriminating in the delivery of programs and services. Agencies must comply with equal opportunity laws, Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments Act of 1972; The Age Discrimination Act of 1975, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Executive orders prohibiting discrimination in the delivery of all programs and services to the public. The Federal government is required to conduct periodic program compliance reviews of recipients of Federal financial assistance to ensure they are adhering to the nondiscrimination statutes. Forest Service personnel integral to the pre-award and post-award process will collect this information during face-to-face meetings or telephone interviews.

Need and Use of the Information: Forest Service will use form FS–1700–6, ''Equal Opportunity Compliance Review Record'' to collect the information and document assisted program compliance. Data collected includes information on actions taken by recipients to ensure the public receives service without discrimination or barriers to access and the recipients' employees understand their customer service responsibilities. The information collected is for internal use only and is utilized to establish and monitor civil rights compliance.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 2,978.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 3,427.

Forest Service

Title: Federal and Non-Federal Financial Assistance Instruments.

OMB Control Number: 0596–NEW.

Summary of Collection: In order to carry out specific Forest Service (FS) activities, Congress created several authorities to assist the Agency in carrying out its mission. Authorized by the Federal Grants and Cooperative Agreements Act, the FS issues Federal Financial Assistance awards, (i.e., grants and cooperative agreements). Agency specific authorities and appropriations also support use of Federal Financial Assistance awards. Information is collected from individuals; non-profit and for-profit institutions; institutions of higher education and state, local, and Native American tribal governments etc. Multiple options are available for respondents to respond including forms, non-forms, electronically, face-to-face, by telephone and over the Internet.

Need and Use of the Information: From the pre-award to the close-out stage, FS will collect information from respondents on forms, via e-mails, meetings, and telephone calls. Using various forms respondents will describe the type of project, project scope, financial plan and other factors. Without this information the FS would not be able to develop, implement, monitor and administer these agreements.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 3,586.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 23,445.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–20793 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dry Fork Vegetative Restoration Project, Lewis and Clark National Forest, Cascade and Judith Basin Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Notice of Intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The USDA Forest Service is withdrawing the Notice of Intent to prepare a Supplemental Environmental Impact Statement for the Dry Fork

Vegetative Restoration project on the Belt Creek Ranger District of the Lewis and Clark National Forest. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on October 27, 2005 (pages 60274–60275).

Dated: August 27, 2008.

Lesley W. Thompson,

Forest Supervisor.

[FR Doc. E8–20746 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold meetings on September 16, 2008 and September 22, 2008 or September 23, 2008 at the U.S. Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meetings will be held September 16, 2008, beginning at 1 p.m. and ending at 4 p.m., and September 22, 2008, beginning at 1 p.m. and ending at 4 p.m. or September 23, beginning at 9:30 a.m. and ending at noon. Selection of final meeting dates can be viewed at *http://www.fs.fed.us/r5/ltbmu/local/ltfac/.*

ADDRESSES: All meetings will be held at the U.S. Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150.

For Further Information or to Request an Accommodation (One Week Prior to Meeting Date) Contact: Arla Hams, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda on September 16, 2008: (1) New member orientation, and (2) public comment. Items to be covered on the agenda on September 22 or September 23 include: (1) Preparation for SNPLMA Round 10, and (2) committee operations.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

This **Federal Register** notice will be published less than 15 calendar days based on these exceptional circumstances: (1) The 2008 LTFAC has only recently received a preliminary confirmation (August 22, 2008); and (2) there will be timely meeting notification through the LTBMLJ Web site at *http://www.fs.fed.us/r5/ltbmu/local/ltfac/.*

Dated: September 2, 2008.

Terri Marceron,

Forest Supervisor.

[FR Doc. E8–20703 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, October 2, 2008. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

(1) Welcome/Introductions;

(2) Members visit areas in Land Between The Lakes;

(3) Board discussion on morning visits relating to dispersed recreation/education;

(4) Update on Nature Watch;

(5) LBL Updates;

(6) Board Discussion of Comments Received.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by September 25, 2008, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on October 2, 2008, 1 p.m. to 3:30 p.m., CDT.

ADDRESSES: The meeting will be held at the Land Between The Lakes Administrative Building, Golden Pond, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: In the morning of October 2, 2008, Advisory Board members will visit various locations throughout Land Between The Lakes to research dispersed recreation/education opportunities. These visits will be done in small groups to different locations; the full board will not be visiting the same location. No official business of the board will take place during these morning visits.

Dated: September 5, 2008.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. E8–20883 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting—September 25—6:30 p.m.

In connection with its investigation into the cause of a January 30, 2007, propane explosion at the Little General Store in Ghent, West Virginia, the United States Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a public meeting on September 25, 2008, starting at 6:30 p.m. in the Tamarack Conference Center Ballroom, One Tamarack Park, Beckley, WV 25801—Telephone # (304)–256–6843.

At the meeting CSB staff will present to the Board the results of their investigation into this incident. Key issues involved in the investigation concern emergency evacuation, hazardous materials incident training for firefighters, 911 Call Center preparations, propane company procedures, and propane technician training. This will be followed by a public comment period prior to a Board vote on the report.

On January 30, 2007, four people were killed and five others were seriously injured when propane vapors from a storage tank ignited and exploded at the Little General convenience store and gasoline station in Ghent, West Virginia.

Propane was used as fuel inside the building. The explosion leveled the store, destroyed a responding ambulance, and damaged other nearby vehicles.

On the day of the incident, a propane technician was preparing to transfer liquid propane from an existing tank to a newly installed replacement tank. When the technician removed a plug from the existing tank's liquid withdrawal valve, liquid propane unexpectedly released and formed a vapor cloud. About 15 minutes after the release began, a 911 call was made. Shortly after, emergency responders and another propane technician arrived on scene. Little General employees closed the store but did not evacuate. Minutes after the emergency responders arrived, the propane ignited killing the two propane technicians and two emergency responders in the area of the tank, injuring four store employees inside the building and two other emergency responders outside.

Following the conclusion of the public comment period, the Board will consider whether to approve the final report and recommendations. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings presented by staff should be considered final. Only after the Board has considered the final staff presentation, listened to the witnesses and the public comments and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. E8–20986 Filed 9–5–08; 4:15 pm]

BILLING CODE 6350–01–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: U.S. Census Bureau.

Title: 2008 Company Organization Survey.

Form Number(s): NC–99001, NC–99007.

OMB Control Number: 0607–0444.

Type of Request: Revision of a currently approved collection.

Burden Hours: 127,517.

Number of Respondents: 48,000.

Average Hours Per Response: 2 hours and 40 minutes.

Needs and Uses: The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose Business Register (BR). In particular, the COS supplies critical information on the organizational structure, operating characteristics, and employment and payroll of multi-location enterprises.

The 2008 COS will direct inquiries to multi-establishment enterprises and selected single-establishment companies. The 2008 COS collection will differ from 2007 in the following ways: due to the 2007 COS being conducted in coordination with the 2007 Economic Census, the 2008 COS has decreased its sample size by about 50%, however, with more detailed inquiries being added (revision to the research and development question) to the 2008 COS and the inclusion of form, NC–99007 (only for single unit establishments), there will be an overall increase in the reporting response burden. Note that we will also mail Form NC–99001 for the 2008 COS.

Form NC–99001 is mailed to multi-location enterprises. We ask questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates; research and development, and employees from a professional employer organization. Establishment inquiries include questions on operational status, mid-March employment, first-quarter payroll, and annual payroll of the establishments.

In addition to the mailing of multi-location enterprises, the Census Bureau will mail Form NC–99007 to some large single-location enterprises that may have added locations. Form NC–99007 contains questions on ownership and control by a domestic company, number of locations of operation, physical location, locations of operation, and inquiries on mid-March employment, first-quarter payroll, and annual payroll for each separate location.

The information collected by the COS is used to maintain and update the BR. The BR serves two fundamental purposes: First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).

Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions, Farms, and State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 195, 224 and 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: September 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20780 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: 2010 Census.

Form Number(s): Various.

OMB Control Number: 0607–0919.

Type of Request: Revision of a currently approved collection.

Burden Hours: 23,990,300.

Number of Respondents: 146,746,000.

Average Hours Per Response: 9 minutes and 40 seconds.

Needs and Uses: The U.S. Census Bureau (Census Bureau) requests authorization from the Office of Management and Budget (OMB) to collect data from the public as part of the 2010 Census. Article 1, Section 2 of the United States Constitution mandates that the U.S. House of Representatives be reapportioned every 10 years by conducting a national census of all residents. In addition to the reapportionment of the U.S. Congress, by law, Census data are required in order to redraw legislative district boundaries. Census data also are used to determine funding allocations for the distribution of hundreds of billions of dollars of federal and state funds each year.

Census 2000 was an operational and data quality success. However, that success was achieved at great operational risk and great expense. In response to the lessons learned from Census 2000, and in striving to better meet our Nation's ever-expanding needs for social, demographic, and geographic information, the U.S. Department of Commerce and the Census Bureau developed a multi-year effort to completely modernize and re-engineer the 2010 Census of Population and Housing. This effort required an iterative series of tests in 2003 thru 2008 that provided an opportunity to evaluate new or improved question wording and questionnaire design, methodologies, and use of technology.

The 2003 Census Test was conducted, and designed to evaluate alternative self-response options and alternative presentation of the race and Hispanic origin question. The 2004 Census Test studied new methods to improve coverage, including procedures for reducing duplication, and tested respondent reaction to revised race and Hispanic origin questions, examples, and instructions. The 2005 National Census Test was designed to evaluate variations of questionnaire content and methodology; the 2006 Census Test relied on the results of the 2004 Census Test to expand on the number of new and refined methods; the 2007 test refined the design of the bilingual form; and the scope of the 2008 Census Dress Rehearsal was reduced to carrying out address canvassing of neighborhoods to improve these processes, along with mailout/mailback processes. Many of the results of these undertakings are applied to the final plans for the 2010 Census operations where feasible.

From the 2010 Census, the Census Bureau will produce the basic population totals by state for Congressional apportionment, as mandated by the Constitution, and more specifically elaborated in Title 13 U.S. Code. Title 13 of the United States Code also provides for the confidentiality of responses to various surveys and censuses.

In compliance with Public Law 94–171, for each state, the Census Bureau will tabulate total population counts by race, Hispanic origin, and, for those 18 years of age and over, by a variety of census geographic areas including legislative district, voting district, and census tabulation blocks. In compliance with Public Law 94–171, the Census Bureau also will tabulate housing unit counts by occupancy status (and vacant).

This clearance request covers the 50 states, the District of Columbia, Puerto Rico, and federally affiliated Americans overseas. To enumerate these areas and overseas Americans, there are several planned operations that will be performed by various staffs in the field, at headquarters, regional census centers, and at local census offices. These operations are intended to improve the accuracy of census coverage and reduce operational risk compared to Census 2000. The clearance request for enumeration of the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Pacific Island Area of America Samoa will be covered under a separate information collection request to OMB.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 & 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: September 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20781 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: 2008 Panel of the Survey of Income and Program Participation, Wave 2 Topical Modules.

Form Number(s): SIPP 28205(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 28003 Reminder Card.

OMB Control Number: 0607–0944.

Type of Request: Revision of a currently approved collection.

Burden Hours: 143,303.

Number of Respondents: 94,500.

Average Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 2 interview for the 2008 Panel of the Survey of Income and Program Participation (SIPP). The core SIPP and reinterview instruments were also cleared under this OMB control number.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and

transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing individual net worth. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 2008 Panel Wave 2 are Work History, Education and Training History, Marital History, Fertility History, Migration History, Household Relationships, and Tax Rebate. These topical modules were previously conducted in the SIPP 2004 Panel Wave 2 instrument, with the exception of the Tax Rebate topical module, which was previously conducted in the SIPP 2008 Wave 1 instrument. Wave 2 interviews will be conducted from January through April 2009.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of approximately 3 to 4 years. The 2008 Panel is scheduled for four years and four months and will include thirteen waves, which will begin September 1, 2008. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of thirteen times (thirteen waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit (PSU) will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

The OMB has established an Interagency Advisory Committee to provide guidance for the content and procedures for the SIPP. Interagency subcommittees were set up to recommend specific areas of inquiries for supplemental questions. The Census Bureau developed the 2008 Panel Wave 2 topical modules through consultation with the SIPP OMB Interagency Subcommittee. The questions for the topical modules address major policy and program concerns as stated by this subcommittee and the SIPP Interagency Advisory Committee.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

The knowledge gained from these ''core'' items will be of limited value without information about how the respondents reached their status at the time of the Wave 1 interview. The core, therefore, is also supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing financing of post-secondary education. These supplemental questions are included with the core and are referred to as ''topical modules.'' The questions in these topical modules will help us reduce, if not eliminate, the ''left-censoring'' analysis problem that occurs in nearly all longitudinal surveys and cited as a serious concern by our data users. Left-censoring refers to the experiences of individuals (or other units of longitudinal analysis) prior to the start of the longitudinal study period.

The questions for these topical modules address major policy and program concerns. Each component is intended to provide explanatory data describing likely relationships between earlier life-course experiences and current socioeconomic status. Personal history data, when linked with data derived from the panel interviews, yield a powerful set of explanatory indicators, which help analysts more fully understand associations between social, demographic, and economic events.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: September 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20782 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Open Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on September 23, 2008, at 10:30 a.m., in the Herbert C. Hoover Building, Room 4830, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect controls on research and emerging technology activities, including those related to deemed exports.

Agenda

1. Welcome and introductions.
2. Remarks from Bureau of Industry and Security (BIS) management.
3. Current deemed export control policy issues and initiatives, including BIS's notice of inquiry published on May 19, 2008 (73 FR 28795) and extended on August 22, 2008 (73 FR 49645) requesting comments on two Deemed Export Advisory Committee recommendations.
4. Emerging technology and research and development issues.
5. U.S. competitiveness.
6. Public comments.
7. Priorities and workplan.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov,* no later than September 16, 2008.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the

Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, presenters should forward the public presentation materials one week prior to the meeting date to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information contact Yvette Springer on (202) 482–2813.

Dated: September 4, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–20904 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of 2nd Afghanistan International Carpet Fair

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Statement

2nd Afghanistan International Carpet Fair, October 26–30, 2008

I. Mission Description

The International Trade Administration of the Department of Commerce is organizing the second U.S. carpet trade mission to Kabul, Afghanistan for the Afghanistan International Carpet Fair on October 26–30, 2008. The mission will be open to U.S. rug businesses that have demonstrated experience in the carpet sector and are interested in exploring trade and investment opportunities in Afghanistan's carpet sector. Afghanistan Investment and Reconstruction Task Force Director, Susan Hamrock Mann, will lead a delegation of U.S.-based executives of U.S. firms interested in pursuing business in Afghanistan's carpet sector. The mission will include participation in the Carpet Fair, matchmaking, and networking with Afghan rug vendors and manufacturers. The mission will reaffirm the U.S. Government's support of bilateral relations, address the Department's commitment to helping Afghanistan develop sectors in which it has a comparative advantage, and seek to expand opportunities for U.S. companies in Afghanistan.

II. Commercial Setting

The mission will take place during a crucial time in Afghanistan's economic reemergence. Approximately 6 million Afghans are employed in the carpet sector directly or indirectly. Afghanistan has a comparative advantage in producing hand woven carpets, putting this sector on the cutting edge of Afghanistan's reintegration into the global economy. Afghanistan's carpets have a rich legacy of artistry and craftsmanship, which has been handed down through many generations. Each type of carpet is unique to the location in which it was produced and inspired. Afghanistan produces various types of carpets woven out of wool, silk, and cotton.

Due to the current lack of finishing facilities, Afghanistan sends more than eighty percent of its carpets to Pakistan, where they are finished and labeled ''made in Pakistan.'' This Trade Mission will enable delegates to explore opportunities for investing in carpet producing facilities and exporting textile equipment to Afghanistan. As such, the Mission could play a valuable role in preserving the brand identity of Afghan carpets, by helping producers to finish and export their own production.

The Afghan Government is helping Afghan carpet producers connect their craftsmanship to the world. In conjunction with the U.S. Department of Commerce, the Government of Afghanistan organized three previous delegations of Afghan carpet producers to visit the United States. In July 2006, a delegation visited major retailers and importers in New York, Atlanta, and Washington, DC. In January 2007, a second delegation attended the AmericasMart International Area Rug Market in Atlanta, where Afghanistan's carpets were part of a major cultural showcase. In January 2008, a third delegation participated in the Las Vegas Market at the World Market Center, where Afghan carpets and cultural items were prominently displayed at the show.

This 2nd Afghanistan International Carpet Fair will provide an opportunity for Afghan carpet producers and U.S. buyers to network, create business relationships, and allow U.S. buyers to explore investment opportunities in the sector. The Trade Mission presents a unique opportunity for seasoned U.S. professionals to partner with Afghan carpet producers as Afghanistan strives to re-establish its leadership position in the global carpet business.

III. Mission Goals

The mission aims to further U.S. commercial policy objectives and to advance specific U.S. business interests in the U.S. and Afghan carpet sectors. The mission will:

- Create an opportunity for U.S. companies to meet and network with Afghan carpet producers;
- Assist Afghan carpet producers in creating long-term relationships with U.S. companies;
- Assist Afghan carpet producers with finding distributors for their carpets in the U.S.;
- Assess the commercial climate of Afghanistan's carpet sector as well as export and investment opportunities in Afghanistan; and
- Encourage continued progress in economic development in Afghanistan.

IV. Mission Scenario

This mission will enable participants to gain access to the Afghan carpet market on a large scale. The mission will include VIP participation in the carpet fair. Participants will be part of the carpet fair's opening night-VIP reception with high-level Afghan government officials. The event will provide opportunities to network with at least 70 different Afghan carpet vendors at the show. The show will feature a broad range of carpets from across Afghanistan's diverse landscape. Networking will also include one-on-one meetings between the U.S. business delegates and Afghan companies.

V. Tentative Timetable

The precise schedule will depend on the availability of local government and business officials and the specific goals of the mission participants. The tentative trip itinerary will be as follows:

Tuesday, October 26

Arrive in Kabul;

Attend opening reception for the Afghanistan International Carpet Fair, Serena Hotel;

Meet with high-level U.S. and Afghan Government officials.

Wednesday, October 27

Attend Afghanistan International Carpet Fair;

Networking between buyers and sellers;

One-on-one meetings between buyers and sellers.

Thursday, October 28–Friday, October 29

Attend Afghanistan International Carpet Fair;

Networking between buyers and sellers;

One-on-one meetings between buyers and sellers.

Saturday, October 30

Depart Kabul (TBC).

Participation Requirements

All parties interested in participating in the 2nd U.S. Carpet Trade Mission to the Afghanistan International Carpet Fair in Kabul, Afghanistan must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. This trade mission is designed for a minimum of 5 and a maximum of 10 qualified companies. Participating companies must be incorporated or otherwise organized in the United States.

There are no fees for participation in this mission. Lodging expenses including three nights in the four-star Serena Hotel in Kabul will be covered by the Export Promotion Agency of Afghanistan. Necessary transportation including airport pickup will be provided by the U.S. Embassy in Kabul, Afghanistan. Expenses for travel to Kabul, meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation:

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's: Products and/or services, primary market objectives, and goals for participation. If we receive an incomplete application, we may either reject the application, request additional information, or take the lack of information into account when we evaluate the applications.

Selection Criteria for Participation:

• Consistency of company's goals with the scope and desired outcome of the mission;

• Capacity and intent to import goods from Afghanistan, export equipment consistent with the scope and desired outcome of the mission, or capacity and intent to invest in Afghanistan. Timely receipt of the company's signed and completed application, participation agreement.

Additionally, U.S. exporters applying for this mission, such as carpet finishing machinery manufacturers or distributors, must certify that the company's products or services are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. The production and content requirements do not apply to U.S. buyer and U.S. investor applicants.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

VIII. Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Applications for the Mission will be made available July XX, 2008 through August 1, 2008. Applications can be completed on-line on the Afghanistan Investment and Reconstruction Task Force Web site at *http://www.trade.gov/afghanistan* or can be obtained by contacting the U.S. Department of Commerce Afghanistan Investment and Reconstruction Task Force at 202–482–1812, *AfghanInfo@mail.doc.gov,* or via the contact information below.

The application deadline is August 1, 2008. Completed applications should be submitted to the Afghanistan Investment and Reconstruction Task Force. Applications received after August 1, 2008 will be considered only if space and scheduling constraints permit.

Disclaimer: Trade mission members participate in the trade mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Afghanistan: *http://travel.state.gov/travel/cis_pa_tw/tw/tw_921.html.* ITA will coordinate with the U.S. Embassy in Kabul to arrange for transportation of the mission participants to and from the airport and hotel. Transportation for certain optional activities, including visits to commercial sites in Kabul, may be provided by the Export Promotion Agency of Afghanistan. The hotel that will be the primary venue for the mission is a luxury hotel and does have strong security measures in place.

The U.S. Government does not make any representations or guarantees as to the commercial success of businesses which participate in this trade mission.

Contact Information: Noor Alam, Afghanistan Investment and Reconstruction Task Force, U.S. Department of Commerce, Washington, DC 20230, Tel: (202) 482–1812, Fax: (202) 482–0980, e-mail: *AfghanInfo@ita.doc.gov.*

Noor Alam,

International Trade Specialist, Afghanistan Investment and Reconstruction Task Force, U.S. Department of Commerce.

[FR Doc. E8–20917 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from petitioners,[1] the Department of Commerce (the Department) is conducting the fourteenth administrative review of the antidumping order on corrosion-resistant carbon steel flat products (CORE) from the Republic of (Korea). This review covers seven manufacturers and exporters (collectively, the respondents) of the subject merchandise: LG Chem., Ltd. (LG), Haewon MSC Co. Ltd. (Haewon), Dongkuk Industries Co., Ltd. (Dongkuk), Dongbu Steel Co., Ltd., (Dongbu); Hyundai HYSCO (HYSCO); Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group); and Union Steel Manufacturing Co., Ltd. (Union). The period of review (POR) is August 1, 2006, through July 31, 2007. We preliminarily determine that during the POR, Dongbu, HYSCO, the POSCO Group, and Union, made sales of subject merchandise at less than normal value (NV). In addition, based on the preliminary results for the respondents

[1] Petitioners are the United States Steel Corporation (U.S. Steel), Nucor Corporation (Nucor), and Mittal Steel USA ISG, Inc. (Mittal Steel USA).

selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

DATES: *Effective Date:* September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska (Union), Cindy Robinson (Dongbu), Christopher Hargett (HYSCO) and Victoria Cho (the POSCO Group, and non-selected companies), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8362, (202) 482–3797, (202) 482–4161, and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping order on CORE from Korea. *See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*). On August 2, 2007, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 72 FR 42383 (August 2, 2007). On August 31, 2007, respondents and petitioners requested a review of Dongbu, HYSCO, the POSCO Group, Union, Dongkuk, Haewon and LG. The Department initiated this review on September 19, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 72 FR 54428 (September 25, 2007).

On December 6, 2007, the Department selected Dongbu, HYSCO, the POSCO Group and Union as mandatory respondents in this review. *See* Memorandum from Christopher Hargett, International Trade Compliance Analyst, through James Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled ''2006–2007 Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review,'' dated December 6, 2007. The Department indicated that it would calculate a weighted-average of the mandatory respondents' margins to apply to those companies not selected for individual examination.

During the most recently completed segments of the proceeding in which Dongbu, HYSCO, the POSCO Group, and Union participated,[2] the Department disregarded sales below the cost of production (COP) that failed the cost test. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. We instructed Dongbu, HYSCO, the POSCO Group, and Union to respond to sections A–D of the initial questionnaire,[3] which we issued on December 6, 2007.

On May 2, 2008, the Department published a notice extending the time period for issuing the preliminary results of the fourteenth administrative review to September 2, 2008. *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 24220 (May 2, 2008).

Dongbu

On January 22, 2008, Dongbu submitted its section A response to the initial questionnaire. On February 5, 2008, Dongbu submitted its sections B–D response to the initial questionnaire. On July 14, 2007, Dongbu submitted its supplemental questionnaire response for sections A–D.

HYSCO

On February 4, 2008, HYSCO submitted its section A–D response to the Department's initial questionnaire. HYSCO submitted its responses to the Department's two section A–D supplemental questionnaires on May 15, 2008, and June 19, 2008, respectively.

The POSCO Group

On February 4, 2008, the POSCO Group submitted its sections A–D response to the Department's initial questionnaire. On June 10, 2008, the POSCO Group submitted its sections A–C supplemental questionnaire responses. The POSCO Group submitted its section D supplemental questionnaire responses on June 12, 2008, June 18, 2008, and July 29, 2008, respectively.

On August 31, 2007, the POSCO Group requested revocation, in part, of the antidumping duty order of CORE from Korea with respect to the POSCO Group. On June 11, 2008, the POSCO Group withdrew its request for revocation and continued to participate as a mandatory respondent in this proceeding.

On January 22, 2008, Union submitted its section A response to the initial questionnaire. On February 4, 2008, Union submitted its sections B–C response to the initial questionnaire. Union submitted its response to the Department's sections A–D supplemental questionnaire on July 16, 2008.

Period of Review

The POR covered by this review is August 1, 2006, through July 31, 2007.

Scope of the Order

This order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measure at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measure at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000,

[2] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53370, 53375 (September 11, 2006) (unchanged in *Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 13086 (March 20, 2007); and *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Amended Final Results of the Twelfth Administrative Review,* 72 FR 20815 (April 26, 2007)).

[3] Section A: Organization, Accounting Practices, Markets and Merchandise.

Section B: Comparison Market Sales.

Section C: Sales to the United States.

Section D: Cost of Production and Constructed Value.

7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.*, products which have been ''worked after rolling''). Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents, covered by the scope of the order, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to CORE sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the Appendix V physical characteristics reported by each respondent.

Collapsing the POSCO Group and Union

On April 9, 2008, U.S. Steel submitted comments asking the Department to seek additional information regarding the POSCO Group's and Union's interest in each other's company. We have received additional information from the POSCO Group and Union. Based on our analysis of the facts of this case and the evidence on the record, we will treat the POSCO Group and Union as separate entities for these preliminary results. While the POSCO Group and Union are affiliated pursuant to section 771(33)(E) of the Act, we have determined that the criteria for 19 CFR 351.401(f) have not been satisfied. Therefore, for these preliminary results, the Department will not collapse the POSCO Group and Union. Due to the proprietary nature of this issue, *see* the collapsing memo.[4]

Normal Value Comparisons

To determine whether sales of CORE by the respondents to the United States were made at less than NV, we compared the Export Price (EP) or Constructed Export Price (CEP) to the NV, as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price/Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise.

In determining whether to classify U.S. sales as either EP or CEP sales, the Department must examine the totality of the circumstances surrounding the U.S. sales process, and assess where the reviewed sales or agreements of sale were made for purposes of section 772(b) of the Act. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. inland freight expenses, warehousing, and U.S. duties.

In accordance with section 772(a) of the Act, we calculated EP for a number of Union's and HYSCO's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated. We based EP on the packed and/or delivered duty paid prices to unaffiliated customers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from the mill to the U.S. border, inland freight from the border to the customer or warehouse, and U.S. brokerage and handling. We adjusted for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(b) of the Act, we calculated CEP sales where the record established that sales made by Dongbu, HYSCO, the POSCO Group, and Union were made in the United States after importation. Dongbu's, HYSCO's, the POSCO Group's, and Union's respective affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers for their sales of the subject merchandise to those U.S. customers. Thus, where appropriate, the Department has determined that these U.S. sales should be classified as CEP transactions under section 772(b) of the Act. Where appropriate, we also made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. warehousing expenses, U.S. wharfage, U.S. inland freight, U.S. brokerage and handling, loading expenses, other U.S. transportation expenses, U.S. customs duties, commissions, credit expenses, letter of credit expenses, warranty expenses, other direct selling expenses, inventory

[4] *See* the Department's September 2, 2008, Memorandum from the Team to Melissa Skinner, Director, AD/CVD Operations, Office 3, titled, ''Whether to Collapse the Antidumping Duty Order with Respect to Subject Merchandise Produced and Exported by Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group); and Union Steel Manufacturing Co. Ltd. (Union)'' (the collapsing memo).

carrying costs incurred in the United States, and other indirect selling expenses in the country of manufacture and the United States associated with economic activity in the United States. *See* section 772(c)(2)(A) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

Consistent with the Department's normal practice, for Union we added the reported duty drawback to the gross unit price. We did so in accordance with the Department's long-standing test, which requires that: (1) The import duty and rebate be directly linked to, and dependent upon, one another; and (2) the company claiming the adjustment demonstrates that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product. *See Certain Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 44086, 44087 (August 7, 2007) (unchanged in *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review,* 73 FR 7252 (February 7, 2008)); *see also* section 772(c)(1)(B) of the Act.

HYSCO's Sales of Subject Merchandise That Were Further Manufactured and Sold as Non-Subject Merchandise in the United States

In its Section A questionnaire response and its June 19, 2008 submission, HYSCO requested that the Department excuse it from reporting information for certain POR sales of subject merchandise imported by its wholly owned U.S. subsidiary, HYSCO America Company (HAC), that were further manufactured after importation and sold as non-subject merchandise in the United States, claiming that determining CEP for sales through HAC would be unreasonably burdensome.

Section 772(e) of the Act provides that when the value added in the United States by an affiliated party is likely to exceed substantially the value of the subject merchandise, the Department shall use one of the following prices to determine CEP if there is a sufficient quantity of sales to provide a reasonable basis of comparison and the use of such sales is appropriate: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

The record evidence shows that the value added by the affiliated party to the subject merchandise after importation in the United States was significantly greater than the 65 percent threshold we use in determining whether the value added in the United States by an affiliated party substantially exceeds the value of the subject merchandise. *See* 19 CFR 351.402(c)(2); *see also* HYSCO's Second Supplemental Sections A–C Response, dated June 19, 2008, at S–6. We then considered whether there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by the exporter or producer to an unaffiliated person that could provide a reasonable basis of comparison. In addition to the sales to HAC that were further manufactured, HYSCO also had CEP sales of similar, but not identical, subject merchandise to unaffiliated customers in the United States in back-to-back transactions through another HYSCO affiliate in the United States, Hyundai HYSCO USA (HHU), and EP sales through an unaffiliated trading company.

Decisions as to the appropriate methodology for determining CEP for sales involving further manufacturing generally must be made on a case-by-case basis. In this instance, we find that there is a reasonable quantity of sales of identical or other subject merchandise to an unaffiliated person. *See* ''Calculation Memorandum for Hyundai HYSCO,'' dated September 2, 2008. Further, another reasonable method for determining CEP for the HAC CEP sales is not evident. In this case, HYSCO reported that the value added after importation is very large and the further manufacturing very complex. *See* HYSCO's Second Supplemental Sections A–C Response, dated June 19, 2008, at S–6. Therefore, consistent with the previous administrative review of CORE from Korea, and similar to our practice in other cases,[5] we relied on HYSCO's other sales of similar merchandise to unaffiliated parties in the United States as the basis for calculating CEP for HYSCO's sales through HAC.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted rebates, discounts, inland freight (offset, where applicable, by freight revenue), inland insurance, and packing. Additionally, we made adjustments to NV, where appropriate, for credit expenses, warranty expenses, post-sale warehousing, and differences in weight basis. We also made adjustments, where appropriate, for home market indirect selling expenses and inventory carrying costs to offset U.S. commissions.

We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

For purposes of calculating NV, section 771(16) of the Act defines ''foreign like product'' as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. When no identical products are sold in the home market, the products which are most similar to the product sold in the United States are identified. For the non-identical or most similar products which are identified based on the Department's product matching criteria, an adjustment is made to the home market sales price to account for the actual physical differences between the products sold in the United States and the home market or third country market. *See* 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to 19 CFR 351.412, to determine whether CEP sales and NV

[5] *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 51584, 51587 (September 10, 2007) (unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review,* 73 FR 14220 (March 17, 2008); *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Reviews,* 72 FR 28676 (May 22, 2007)).

sales were at different LOTs, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

We did not make an LOT adjustment under 19 CFR 351.412(e) because, as there was only one home market LOT for each respondent, we were unable to identify a pattern of consistent price differences attributable to differences in LOTs (*see* 19 CFR 351.412(d)). Under 19 CFR 351.412(f), we are preliminarily granting a CEP offset for Dongbu, HYSCO, the POSCO Group, and Union because the NV for each company is at a more advanced LOT than the LOT for their U.S. CEP sales.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see the September 2, 2008, ''Calculation Memorandum for Dongbu Steel Co., Ltd;'' ''Calculation Memorandum for Hyundai HYSCO;'' ''Calculation Memorandum for the POSCO Group;'' and ''Calculation Memorandum for Union Steel Manufacturing Co., Ltd.;'' the public versions of which are on file in the Central Records Unit, Room 1117 of the main Department building.

Cost of Production

A. Calculation of COP

We are investigating COP for Dongbu, HYSCO, the POSCO Group, and Union because during the most recently completed segments of the proceeding in which Dongbu, HYSCO, the POSCO Group, and Union participated, the Department found and disregarded sales that failed the cost test for each of these companies. We calculated company-specific COPs for Dongbu, HYSCO, the POSCO Group, and Union based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling expenses, selling, general and administrative expenses (SG&A), and packing costs in accordance with section 773(b)(3) of the Act. *See* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses.

We relied on the COP data as submitted by Dongbu, HYSCO, and Union. We also relied on the COP data submitted by the POSCO Group except in the calculation of G&A expense ratios for POSCO and POCOS. Specifically, we disallowed the gains related to trading securities as offsets to G&A expenses in the calculation of POSCO's G&A expense rate and, for POCOS, we disallowed the gains on tangible assets and the gains related to available for sale securities as offsets to the G&A expenses. *See* Memorandum from Frederick W. Mines to Neal M. Halper, Director Office of Accounting, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—POSCO,'' dated September 2, 2008.

B. Test of Home-Market Prices

In determining whether to disregard home market sales made at prices below the COP, as required under sections 773(b)(1)(A) and (B) of the Act, we compared the weighted-average COP figures to home market sales of the foreign like product and we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

Pursuant to section 773(b)(1) of the Act, we may disregard below-COP sales in the determination of NV if these sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP for at least six months of the POR, we determined that sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Where prices of a respondent's sales of a given product were below the per-unit COP at the time of sale and below the weighted-average per-unit costs for the POR, we determined that sales were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.''

We tested and identified below-cost home market sales for Dongbu, HYSCO, the POSCO Group, and Union. We disregarded individual below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* the September 2, 2008, ''Calculation Memorandum for Dongbu Steel Co., Ltd.''; ''Calculation Memorandum for Hyundai HYSCO''; ''Calculation Memorandum for the POSCO Group''; and ''Calculation Memorandum for Union Steel Manufacturing Co., Ltd.''

Arm's-Length Sales

Dongbu, HYSCO, and the POSCO Group also reported that they made sales in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.* , sales at arm's length. *See* 19 CFR 351.403(c).

To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 71 FR 45017, 45020 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February

14, 2007)); and 19 CFR 351.403(c). Conversely, where we found sales to the affiliated party that did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

Manufacturer/exporter	Percent margin
Dongbu	1.91
HYSCO	1.17
The POSCO Group	0.79
Union	1.90
Review-Specific Average Rate Applicable to the Following Companies: [6]	
LG, Haewon, and Dongkuk	1.69

[6] This rate is based on the weighted average of the margins calculated for those companies selected individual review, excluding *de minimis* margins or margins based entirely on adverse facts available.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in such briefs or comments and may be filed no later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on a diskette.

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondent for which it has reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondents for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CORE for Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the all-others rate established in the LTFV. *See Orders on Certain Steel from Korea*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20920 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''). *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Final Partial Rescission of the Second Administrative Review,* 73 FR 12127 (March 6, 2008) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We find that certain manufacturers/exporters have not sold subject merchandise at less than normal value during the period of review (''POR'') February 1, 2006, through January 31, 2007.

EFFECTIVE DATE: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2008, the Department published the *Preliminary Results* of this administrative review. *See Preliminary Results* at 73 FR 12127. On March 26, 2008, the mandatory respondents [1] submitted additional surrogate value information. On April 3, 2008, we extended the deadline for parties to submit the case briefs and rebuttal briefs to May 7, 2008 and May 12, 2008, respectively. On April 7, 2008, the Ad Hoc Shrimp Trade Action Committee (''Petitioner'') filed a request for a public hearing. On May 9, 2008, we extended the deadline to file rebuttal briefs to May 14, 2008. On May 22, 2008, the Department extended the deadline for the completion of the final results of this review, including our analysis of issues raised in case or rebuttal briefs, until September 2, 2008. *See Certain Frozen Warmwater Shrimp from Thailand and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Second Administrative Reviews* 73 FR 29738 (May 22, 2008).

On May 7, 2008, the mandatory respondents, certain separate-rate respondents, Petitioner, Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (''Grobest''), and Vietnam Fish One Co., Ltd. (''Fish-One'') filed case briefs. On May 14, 2008, Petitioner, the mandatory respondents, Grobest, and Fish-One filed rebuttal briefs. On May 21, 2008, Petitioner withdrew its hearing request, leaving no public hearing request on the record.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Second Administrative Review, dated September 2, 2008, which is hereby adopted by this notice (''Issues and Decision Memo''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo 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://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Final Rescission of Review

In the *Preliminary Results,* the Department issued a notice of intent to rescind this administrative review with respect to: Bac Lieu Fisheries Company Limited (''Bac Lieu''), Khanh Loi Trading (''Khanh Loi''), Pataya Food Industry (Vietnam) Ltd. (''Pataya''), Seaprodex, Bentre Aquaproduct Imports & Exports (''Bentre''), Hanoi Seaproducts Import Export Corporation (''Seaprodex Hanoi''), and Cam Ranh Seafoods Processing Enterprise Company (''Camranh''), which informed the Department that they did not export the subject merchandise to the United States during the POR. *See Preliminary Results* at 12129.

Subsequent to the *Preliminary Results,* no information was submitted on the record indicating that the above companies made sales to the United States of subject merchandise during the POR. Thus, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review with respect to the seven above-mentioned companies for the period of February 1, 2006, through January 31, 2007.

Changes Since the Preliminary Results

Based on our analysis of information on the record of these reviews, and comments received from the interested parties, we have made changes to the margin calculations for certain respondents.

We have updated the surrogate value for labor and surrogate financial ratios used in the *Preliminary Results.* For further details *see* Issues and Decision Memo at Comments 3 and 4 and Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Final Results, dated September 2, 2008. In addition, we have made company-specific changes since the *Preliminary Results.* Specifically, we have performed clerical error corrections for Minh Phu. For further details on these company-specific changes, *see* Issues and Decision Memo at Comment 8.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are

[1] The mandatory respondents are: Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), Minh Phu Seafood Corporation; Minh Phu Seafood Corp., Minh Qui Seafood Co., Ltd., Minh Qui Seafood, Minh Phat Seafood Co., Ltd., Minh Phat Seafood, (collectively, ''Minh Phu'') and Camau Frozen Seafood Processing Import Export Corporation (''Camimex'').

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Separate Rates

In our *Preliminary Results*, we determined that the mandatory respondents, Minh Phu and Camimex, as well as certain separate-rate respondents, met the criteria for the application of a separate rate.[3] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find each of these entities meet the criteria for a separate rate. However, in the ''Final Results of the Review'' section below, the Department has listed the qualifying additional trade names for each company granted a separate rate in this review. For a detailed discussion of the trade names not granted separate-rate status under cover of a separate-rate recipient, *see* Issues and Decision Memo at Comment 7.

Separate Rate Calculation

In the *Preliminary Results,* we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made and selected two exporters, Minh Phu and Camimex, as mandatory respondents in this review. *See Preliminary Results* at 12133. Additionally, 26[4] additional companies (listed in footnote three) submitted timely information as requested by the Department and remained subject to review as cooperative separate rate respondents. The Department assigned a rate to the remaining 26 cooperative separate rate respondents not selected for individual examination.

In the *Preliminary Results,* we noted that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Tariff Act of 1930, as amended (''the Act''). We further explained that the Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies *excluding* zero and *de minimis* rates and rates based entirely on adverse facts available (''AFA''). For purposes of the Preliminary Results, however, we did assign the 26 separate rate respondents a dumping margin of *de minimis* because the mandatory respondents, Minh Phu and Camimex, both received *de minimis* rates.

However, in the *Preliminary Results,* the Department also invited comments from interested parties regarding the methodology used to determine the rate for non-selected companies. *Id.,* at 12135–36. Specifically, we invited

[3] These other separate rate companies are: Amanda Foods (Vietnam) Ltd.; {C.P. Vietnam Livestock Co. Ltd.; C P Vietnam Livestock Co. Ltd.; C P Livestock} (collectively, CP Vietnam); {Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO''); Minh Hai Sea Products Import Export Company (Seaprimex Co)} (collectively, Seaprimexco); {Cadovimex Seafood Import-Export and Processing Joint Stock Company (''CADOVIMEX''); Cai Doi Vam Seafood Import-Export Company (Cadovimex)} (collectively, Cadovimex); {Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.''); Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex)} (collectively, Cafatex); {Can Tho Agricultural and Animal Product Import Export Company (''CATACO''); Can Tho Agricultural Products aka CATACO} (collectively, Cataco); {Coastal Fishery Development; Coastal Fisheries Development Corporation (Cofidec); Coastal Fisheries Development Corporation (Cofidec)} (collectively, Cofidec); {Cuulong Seaproducts Company (''Cuu Long Seapro''); Cuu Long Seaproducts Limited (Cuulong Seapro)} (collectively, Cuulong Seapro); Danang Seaproducts Import Export Corporation (''Seaprodex Danang'') and Tho Quang Seafood Processing & Export Company; {Thuan Phuoc Seafoods and Trading Corporation aka Frozen Seafoods Factory 32 aka Seafoods and Foodstuff Factory; Frozen Seafoods Factory No. 32 aka thuan phuoc); Frozen Seafoods Fty aka above Thuan Phuoc} (collectively, Thuan Phuoc); {Grobest & I-Mei Industry Vietnam; Grobest} (collectively, Grobest); Investment Commerce Fisheries Corporation (''Incomfish''); Kim Anh Co., Ltd.; {Minh Hai Export Frozen Seafood Processing Joint Stock Company; Minh Hai Export Frozen Seafood Processing Joint Stock Company (''Minh Hai Jostoco'')} (collectively, Minh Hai Jostoco); Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai''); Ngoc Sinh Private Enterprise aka Ngoc Sinh Seafoods (collectively, Ngoc Sinh); Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco''); Nha Trang Seaproduct Company (''Nha Trang Seafoods''); Phu Cuong Seafood Processing and Import-Export Co., Ltd.; {Phuong Nam Co. Ltd.; Phuong Nam Seafood Co. Ltd.} (collectively, Phuong Nam); Sao Ta Foods Joint Stock Company (''Fimex VN''); Soc Trang Aquatic Products and General Import Export Company (''Stapimex''); UTXI Aquatic Products Processing Company; Viet Foods Co., Ltd. (''Viet Foods''); {Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd.''); Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd''); Vietnam Fish-One Co., Ltd.} (collectively, Fish-One); and Vinh Loi Import Export Company (''Vimexco'').

[4] Although we stated in the *Preliminary Results* that 27 companies received a separate rate, two of the companies listed separately (Ngoc Sinh Private Enterprise and Ngoc Sinh Seafoods) are trade names of the same company. In actuality, 26 companies/groups have received a separate rate.

interested parties to comment on the rate to be applied to the non-selected companies, considering, but not limited to, the following factors: (a) The Department has limited its examination of respondents pursuant to section 777A(c)(2)(B) of the Act, (b) section 735(c)(5) provides that, with some exceptions, the all-others rate in an investigation is to be calculated excluding any margins that are zero, *de minimis* or based entirely on facts available, and (c) the SAA states that with respect to the calculation of the all-others rate in such cases, ''the expected method will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.'' *See* SAA at 873. We received comments on this issue from Petitioner, the mandatory respondents, Fish-One, Grobest, and certain non-selected, cooperative separate-rate respondents. These comments were addressed in the Issues and Decision Memorandum at Comment 6.

Based on the comments we received, for the final results of this review, we have determined that, because the circumstances of this review are similar to those of the preceding review, we will assign the margin of 4.57 percent, the margin calculated for cooperative separate rate respondents in the underlying investigation, to the SR Respondents in the instant review with no history of a calculated margin, as a reasonable method which is reflective of the range of commercial behavior demonstrated by exporters of the subject merchandise during a very recent period in time. However, for those SR Respondents that received a calculated rate in a prior segment, we are assigning that calculated rate as the company's separate rate in this review. Specifically, for Fish-One and Grobest, we are assigning the rates most recently calculated for both companies (zero) as their separate rate in the instant review because these rates are more recent than the separate rate calculated in the LTFV and are based on the company's own data. Additionally, for Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai''), we are also assigning, as a separate rate, the most recent calculated rate of 4.30 percent, from the LTFV, which was based on the company's own data. For all other SR Respondents in the instant review, the separate rate is 4.57 percent. For additional details, *see* Issues and Decision Memorandum at Comment 6.

Vietnam-Wide Entity

In the *Preliminary Results,* the Department determined that 35 companies which did not demonstrate eligibility for a separate rate are properly considered part of the Vietnam-Wide entity.[5] As these companies failed to respond to the Department's quantity and value questionnaire, we found it appropriate to apply facts available to the Vietnam-Wide entity, which includes these entities, in accordance with sections 776(a)(2)(A) and (B) of the Act. Moreover, because the Vietnam-Wide entity did not respond to the Department's questionnaires, we found it did not cooperate to the best of its ability and therefore, determined that adverse facts available (''AFA'') was appropriate pursuant to section 776(b) of the Act. Since the *Preliminary Results,* none of these companies submitted comments regarding these findings. Therefore, we continue to find that it is appropriate to apply facts available with an adverse inference with respect to the Vietnam-Wide entity (including the 35 non-responsive companies/groups) in accordance with section 776(b) of the Act.

Final Results of the Review

The Department has determined that the following final dumping margins exist for the period February 1, 2006, through January 31, 2007:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (percent)
Minh Phat Seafood Co., Ltd., aka Minh Phat Seafood aka Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka Minh Phu Seafood Corp. aka Minh Phu Seafood Corporation aka Minh Qui Seafood aka Minh Qui Seafood Co., Ltd	[a] 0.01
Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX''), aka Camimex, aka Camau Seafood Factory No. 4, aka Camau Seafood Factory No. 5	0.00
Amanda Foods (Vietnam) Ltd	4.57
C.P. Vietnam Livestock Co. Ltd., aka C P Vietnam Livestock Co. Ltd., aka C P Livestock	4.57
Cadovimex Seafood Import-Export and Processing Joint Stock Company (''CADOVIMEX'') aka Cai Doi Vam Seafood Import-Export Company (Cadovimex)	4.57
Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'') aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka Cafatex, aka Cafatex Vietnam, aka Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, aka Cas, aka Cas Branch, aka Cafatex Saigon, aka Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Taydo Seafood Enterprise	4.57
Can Tho Agricultural and Animal Product Import Export Company (''CATACO'') aka Can Tho Agricultural Products aka CATACO[6]	4.57
Coastal Fishery Development aka Coastal Fisheries Development Corporation (Cofidec) aka Coastal Fisheries Development Corporation (Cofidec)	4.57
Cuulong Seaproducts Company (''Cuu Long Seapro'') aka Cuu Long Seaproducts Limited (Cuulong Seapro)	4.57
Danang Seaproducts Import Export Corporation (''Seaprodex Danang'') aka Tho Quang Seafood Processing & Export Company, aka Seaprodex Danang, aka Tho Quang Seafood Processing And Export Company, aka Tho Quang	4.57
Frozen Seafoods Factory No. 32, aka Frozen Seafoods Fty, aka Thuan Phuoc, aka Thuan Phuoc Seafoods and Trading Corporation, aka Frozen Seafoods Factory 32, aka Seafoods and Foodstuff Factory	4.57
Grobest & I-Mei Industry Vietnam, aka Grobest	[b] 0.00
Investment Commerce Fisheries Corporation (''Incomfish'')	4.57

[5] *See Preliminary Results* at footnote 10 for a list of the 35 unresponsive companies.

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM—Continued

Manufacturer/exporter	Weighted-average margin (percent)
Kim Anh Co., Ltd	4.57
Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco''), aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Joint Stock Seafood Processing Joint-Stock Company, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Co.[7]	4.57
Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai'')	4.30
Minh Hai Sea Products Import Export Company (Seaprimex Co), aka Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'')	4.57
Ngoc Sinh Private Enterprise, aka Ngoc Sinh Seafoods	4.57
Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco'')	4.57
Nha Trang Seaproduct Company (''Nha Trang Seafoods'')	4.57
Phu Cuong Seafood Processing and Import-Export Co., Ltd	4.57
Phuong Nam Co. Ltd., aka Phuong Nam Seafood Co. Ltd	4.57
Sao Ta Foods Joint Stock Company (''Fimex VN''), aka Sao Ta Seafood Factory	4.57
Soc Trang Aquatic Products and General Import Export Company (''Stapimex'')	4.57
UTXI Aquatic Products Processing Company, aka UT XI Aquatic Products Processing Company, aka UT-XI Aquatic Products Processing Company, aka UTXI, aka UTXI Co. Ltd., aka Khanh Loi Seafood Factory, aka Hoang Phuong Seafood Factory[8]	4.57
Viet Foods Co., Ltd. (''Viet Foods'')	4.57
Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd.'') aka Vietnam Fish-One Co., Ltd	[b] 0.00
Vinh Loi Import Export Company, aka Vimexco, aka Vinh Loi Import/Export Co., aka VIMEX, aka Vinhloi Import Export Company, aka Vinh Loi Import-Export Company	4.57
Vietnam-Wide Rate[9]	25.76

[a] (*de minimis*).
[b] (zero).

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in these final results of review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese 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 Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnamese-wide rate of 25.76 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice 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 the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply

[6] We continue to find that the separate rate granted to Cataco is limited to only Cataco's exports of subject merchandise during the POR. Cataco's separate rate does not apply to Cantho Import-Export Seafood Joint Stock Company, aka Caseamex. For a detailed discussion, *see* Issue and Decision Memorandum at Comment 7.

[7] We note that we have not extended Minh Hai Jostoco's separate-rate status to: Kien Cuong Seafood Processing Import Export Joint-Stock Company (''Kien Cuong'') and Viet Cuong Seafood Processing Import Export Joint-Stock Company (''Viet Cuong''). For a detailed discussion, *see* Issues and Decision Memorandum at Comment 7.

[8] We note that we have not extended UTXI's separate-rate status to: UTXI Aquatic Products Processing Corporation. For a detailed discussion, *see* Issues and Decision Memorandum at Comment 7.

[9] The Vietnam-Wide entity includes: AAAS Logistics; Agrimex; American Container Line; An Giang Fisheries Import and Export Joint Stock Company (Agifish); Angiang Agricultural Technology Service Company; Bentre Frozen Aquaproduct Exports; Can Tho Seafood Exports; Cautre Enterprises; Dong Phuc Huynh; General Imports & Exports; Hacota; Hai Thuan Export Seaproduct Processing Co., Ltd.; Hai Viet; Hatrang Frozen Seaproduct Fty; Hoa Nam Marine Agricultural; Lamson Import-Export Foodstuffs Corporation; Nha Trang Company Limited; Nha Trang Fisheries Co. Ltd.; Saigon Orchide; Sea Product; Sea Products Imports & Exports; Seafood Processing Imports-Exports; Sonacos; Song Huong ASC Joint Stock Company; Special Aquatic Products Joint Stock Company (''Seaspimex''); Tacvan Frozen Seafoods Processing Export Company; Thami Shipping & Airfreight; Thanh Long; Thien Ma Seafood; Tourism Material and Equipment Company (Matourimex Hochiminh City Branch); Truc An Company; Vietnam Northern Viking Technology Co. Ltd.; Vietnam Northern Viking Technologie Co Ltd.; Vilfood Co.; Vita; V N Seafoods.

with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results of this administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Comment 1: Surrogate Country
Comment 2: Raw Shrimp Surrogate Value
Comment 3: Surrogate Financial Ratios
Comment 4: Wage Rate Calculation
Comment 5: Treatment of Sales with Negative Margins (''Zeroing'')
Comment 6: Separate Rate (''SR'') Calculation Methodology
Comment 7: Separate-Rate Status for Additional Trade Names
Comment 8: Minh Phu Group's Importer-Specific Assessment Clerical Error

[FR Doc. E8–20927 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (''PRC''). The period of review (''POR'') is August 1, 2006, through July 31, 2007. We have preliminarily determined that Since Hardware (Guangzhou) Co., Ltd. (''Since Hardware''), has made sales to the United States of the subject merchandise at prices below normal value and that Forever Holdings Limited (''Forever Holdings'') has not sold merchandise to the United States at prices below normal value. We invite interested parties to comment on these preliminary results. Parties filing comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

EFFECTIVE DATE: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding floor-standing, metal-top ironing tables and certain parts thereof (''ironing tables'') from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004) (*Ironing Tables Order)*.

On August 2, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order of ironing tables from the People's Republic of China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 42383 (August 2, 2007). On August 30, 2007, Home Products International (the Petitioner in this proceeding) requested, in accordance with 19 CFR 351.213(b)(2), that the Department conduct a administrative review of this order for Since Hardware. On August 31, 2007, Since Hardware and Forever Holdings requested administrative reviews of their sales under the antidumping duty order. On September 25, 2007, the Department initiated an administrative review of Since Hardware and Forever Holdings. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007).

On April 21, 2008, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until September 2, 2008. *See Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the 2006/2007 Administrative Review*, 73 FR 21317 (April 21, 2008).

On March 3, 2008, we invited interested parties to comment on the Department's surrogate country selection and to submit publicly available information to value the factors of production. On April 24, 2008, we extended the period for filing surrogate value and factor of production comments in this review until June 6, 2008. On June 6, 2008, Since Hardware, Forever Holdings, and the Petitioner each submitted comments concerning surrogate values and factors of production.

The Department received timely filed original and supplemental questionnaire responses from both Since Hardware and Forever Holdings.

Scope of the Order

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without

additional features, *e.g.*, iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board'' *i.e.*, a metal-top table only, without the pad and cover with or without additional features, *e.g.*, iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (''CBP'') purposes, the Department's written description of the scope remains dispositive.

Non-Market-Economy Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a Non-Market Economy (''NME'') shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–01 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). None of the parties to these reviews has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving 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 rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (''*de jure*'') and in fact (''*de facto*''), with respect to its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 at Comment 1 (May 6, 1991) (''*Sparklers*''). In this review, Since Hardware and Forever Holdings submitted information in support of their respective claims for a company-specific rate.

Accordingly, we have considered whether Since Hardware and Forever Holdings are independent from government control, and therefore eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision making process at the individual firm level. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61758 (November 19, 1997), *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from *Sparklers*, further discussed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities. *See Sparklers*, 56 FR 20588 at Comment 1, and *Silicon Carbide*, 56 FR at 22586.

Since Hardware and Forever Holdings provided complete separate-rate information in their respective responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether both Since Hardware and Forever Holdings are independent from government control.

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588 at Comment 1. As discussed below, our analysis shows that the evidence on the record supports a preliminary finding of an absence of *de jure* government control for both Since Hardware and Forever Holdings based on each of these factors.

Since Hardware and Forever Holdings have placed on the record a number of documents to demonstrate absence of *de jure* control, including documentation substantiating their claims that both are wholly foreign-owned enterprises registered in China. This documentation includes the ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994) (''*Foreign Trade Law*''), and ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (June 3, 1988) (''*Legal Corporations Regulations*''). *See* Since Hardware's Section A questionnaire response dated October 25, 2007 (''Since Hardware Section A'') at Exhibits A–2 and A–5; *see also* Forever Holdings October 25, 2007 questionnaire response (''Forever Holdings Section A'') at Exhibits A–2 and A–5. Both Since Hardware and Forever Holdings also submitted copies of their respective business licenses. Since Hardware's business license was issued by the Guangzhou Municipal Industrial and Commercial Administration. See Since Hardware

Section A at Exhibit A–4. Forever Holdings business license was issued by the Foshun City Shunde District and Industrial and Commercial Administration Bureau. *See* Forever Holdings Section A at Exhibits 3 and 4. Since Hardware and Forever Holdings both indicated their respective business licenses require that they maintain sufficient capital and operating capacity to engage in normal business operations and that only the company to which the business license was issued may use the business license. *See* Since Hardware Section A at 4, and Forever Holdings Section A at 7. Also, Since Hardware and Forever Holdings both affirmed there are no limitations imposed on company operations by the business license. See Since Hardware Section A at 5, and Forever Holdings Section A at 8. The business licenses of both Since Hardware and Forever Holdings may be revoked only if a situation arises where, consistent with Article 30 of the *Legal Corporations Regulations*, Since Hardware or Forever Holdings engage in prohibited activities or possess insufficient business capital. Further, both Since Hardware and Forever Holdings stated that to obtain a renewal of their respective business licenses, they each must submit balance sheets and profit and loss (''P&L'') statements to the issuing authority. *Id.*

Forever Holdings has placed on the record the *Foreign Trade Law. See* Forever Holdings Section A at Exhibit 2. Both Since Hardware and Forever Holdings contend that this law allows them full autonomy from the central authority in governing their business operations. *See* Since Hardware Section A at 3, and Forever Holdings Section A at 4–6. We have reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states, ''foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.'' As in prior cases, we have analyzed such PRC laws and found they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001), unchanged in *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, we preliminarily determine that there is an absence of *de jure* control over the export activities of both Since Hardware and Forever Holdings.

Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Sparklers*, 56 FR at 20589. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. *See id.*

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See id.*

Since Hardware and Forever Holdings have asserted the following: (1) they are both wholly foreign-owned companies; (2) there is no government participation in the setting of export prices; (3) company management has the authority to enter into sales contracts; (4) the companies' owner appoints the company's management and do not have to notify government authorities of their management selections; (5) there are no restrictions on the use of the companies' export revenue; and (6) the companies' board of directors decide how profits will be used. *See* Since Hardware Section A at 3–9, and Forever Holdings Section A at 3–11. We have examined the documentation provided by Since Hardware and Forever Holdings and note no discrepancies between the information on the record and the two companies' statements on the record with respect to *de facto* control over its export activities.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the export activities of both Since Hardware and Forever Holdings, we preliminarily determine that both Since Hardware and Forever Holdings have met the criteria for the application of a separate rate.

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below normal value, we compared their United States prices to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice. *See* section 773(a) of the Act.

U.S. Price

Export Price

We based U.S. price for both Since Hardware and Forever Holdings on export price (''EP'') in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted foreign inland freight, and foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. Also, for Since Hardware we added billing adjustments to the gross unit price, where applicable.

Both Since Hardware and Forever Holdings incurred foreign inland freight and foreign brokerage and handling expenses from PRC service providers. We therefore valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion).

Normal Value

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production valued in a surrogate market economy country or countries if available information does not permit the calculation of NV pursuant to section 773(a) of the Act. In this instance such information is not available. Therefore, section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production based on the prices or costs of the factors of production, in one or more market-economy countries that to the extent possible are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development, as identified in the Memorandum from Carole Showers, Acting Director Office of Policy, to Scot Fullerton, Program Manager, AD/CVD Operations, Office 9,

dated February 28, 2008. *See* Memorandum to the File from Michael J. Heaney regarding Selection of a Surrogate Country in the Third Administrative Review of Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China, dated September 2, 2008 (''Surrogate Country Memorandum''). In addition, based on information from the investigation of ironing tables, India is a significant producer of comparable merchandise. *See Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 68 FR 44040, 44042 (July 25, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 35296, 35297 (June 24, 2004).

Accordingly, we selected India as the surrogate country for purposes of valuing the factors of production because it satisfies the Department's criteria for surrogate-country selection. *See* Surrogate Country Memorandum.

Market Economy Purchases

Since Hardware purchased certain inputs used in the production of the subject merchandise from market economy (''ME'') suppliers and paid for these inputs in ME currencies. We used the weight-averaged ME prices paid by Since Hardware when the inputs were obtained from a ME supplier, paid for in a ME currency, and were a significant portion of the total purchases of that input. See 19 CFR 351.408(c)(1).

Section IV of the Department's standard Section D questionnaire requires respondents to report for each raw material the percentage purchased from an ME country and the percentage purchased from an NME. In its responses to the Department, Since Hardware reported the percentages of each raw material purchased from ME countries and paid for in a ME currency. For each of the ME inputs purchased by Since Hardware during the POR, the Department found that the percentage purchased from ME suppliers constituted more than a third of the input utilized in production of the merchandise. Thus, consistent with the policy set forth in *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comment*, 71 FR 61716, 61718 (October 19, 2006) (''*Antidumping Methodologies*''), we used those ME purchases in our calculations. Due to the proprietary nature of Since Hardware's ME purchases and quantities, we are not able to discuss the details of these purchases here. For a complete discussion, *see* Memorandum from Michael J. Heaney regarding Since Hardware Analysis (''Since Hardware Analysis Memorandum'') dated September 2, 2008. As a result, the Department found that Since Hardware's ME purchases of cold rolled steel, hot rolled steel, steel wire rod, powder coating, cotton fabric, springs, bolts, center nail and nail heads, rivets, cartons, corrugated paper and labels were a meaningful portion of total purchases of that input. *See Antidumping Methodologies*, 71 FR at 61718. Therefore, in accordance with section 351.408(c)(1) of the Department's regulations, we have preliminarily valued these inputs using the actual ME prices paid.

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors of production reported by the producers for materials, energy, labor, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available values in the surrogate country, India.

Since Hardware and Forever Holdings both reported by-product sales. With respect to the application of the by-product offset to normal value, consistent with the Department's determination in the investigation of Diamond Sawblades from the PRC, we will deduct the surrogate value from normal value because the surrogate financial statements on the record of this administrative review contain no references to the treatment of by-products and because Since Hardware and Forever Holdings reported that they sold their by-products. *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (''*Diamond Sawblades from the PRC*''), and accompanying Issues and Decision Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006). This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit. *Id.*

In selecting the surrogate Indian values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum (''*Garlic Decision Memorandum*'') at Comment 6; *see also Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (''Indian Import Statistics'') for the POR to value inputs sourced domestically from PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the closest seaport to the factory. This adjustment is in accordance with the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In addition, in instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*i.e.*, Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1; *see also* Factors of Production Valuation Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Floor-

Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated September 2, 2008 (''Factor Valuation Memorandum'') (for a complete discussion of the import data that we excluded from our calculation of surrogate values).

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchange rates posted on the Import Administration website (http://www.trade.gov/ia/).

We valued the factors of production as follows:

The Department used the Indian Import Statistics to value the raw material and packing material inputs Since Hardware and Forever Holdings used to produce the merchandise under review during the POR, except where noted below. Detailed descriptions of all surrogate values are discussed in the Factor Valuation Memorandum.

To value water, we calculated the average rate of inside and outside industrial water rates from various regions as reported by the Maharashtra Industrial Development Corporation, http://midcindia.org, dated June 1, 2003. We inflated the value for water using the POR average WPI rate. *See* Factor Valuation Memorandum.

We valued electricity using the 2000 electricity price in India reported by the International Energy Agency statistics for *Energy Prices & Taxes, Second Quarter 2003*. We inflated the value for electricity using the POR average WPI rate. *See* Factor Valuation Memorandum.

We valued diesel using the rates provided by the OECD's International Energy Agency's publication: Key World Energy Statistics from 2004 and 2005. The prices are based on 2004 and 2005 first quarter prices of automotive diesel fuel retail prices. *See* Factor Valuation Memorandum.

With respect to valuation of factory overhead, selling, general and administrative expenses, and profit, in the Final Results of the 2004–2005 Administrative Review of this Order, the Department relied on the 2005–2006 Infiniti Modules Pvt. Ltd. (''Infiniti Modules'') financial statements, because it provides the most contemporaneous and publicly available information. *See Floor Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Recisssion, In Part, of Antidumping Duty Administrative Review of Antidumping Duty Administrative Review* 72 FR 13239, (March 21, 2007) and Accompanying Issues and Decision Memorandum at Comment 1 (''*AR 1 Final Results*''). Petitioner placed on the record Infiniti Modules 2005–2006 financial statements in its July 14, 2008 submission at Exhibit 1. Petitioner included in its July 14, 2008 submission the profit and loss statement for Infiniti Modules for the 2005–2006 financial period.

In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use ''the best available information'' from the appropriate market economy country. As discussed above, in choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. *See, e.g.*, Garlic Decision Memorandum, at Comment 6. For these preliminary results, the Department has determined that the 2005–2006 Infiniti Modules financial statements are complete, publicly available, and reflect merchandise comparable to ironing tables. We note the 2005–2006 Infiniti Modules financial statements were obtained from the Indian Registrar of Companies, and are publicly available. *See* Petitioner's July 14, 2008 surrogate value submission. With respect to quality, we note the 2005–2006 Infiniti Modules financial statements are complete, audited financial statements with all auditors notes and schedules, as well a complete balance sheet and P&L. Regarding specificity, we preliminarily find, consistent with our determination in the 2004–2005 review of this proceeding, that Infiniti Modules manufactures merchandise that closely reflects merchandise comparable to ironing tables. (*See AR1 Final Results*.) Therefore, we preliminarily find that the 2005–2006 Infinity Modules financial statements are publicly available, quality data specific to the merchandise under review.

Thus, the Department preliminarily finds, consistent with section 773(c)(1) of the Act and the *AR1 Final Results*, that the 2005–2006 Infiniti Modules financial statements are the best information available on the record of this review, from which to value the surrogate financial ratios of factory overhead, selling, general & administrative expenses, and profit. *See* Factor Valuation Memorandum for details concerning the calculation of these ratios.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. Therefore, to value the labor input, we used the PRC's regression-based wage rate published by Import Administration on its website, http://www.trade.gov/ia/. *See* Factor Valuation Memorandum.

To value truck freight, we calculated a weighted-average freight cost based on publicly available data from www.infreight.com, an Indian inland freight logistics resource website. *See* Factor Valuation Memorandum.

To value brokerage and handling, the Department used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in the submission from Essar Steel Ltd. (''Essar Steel''), dated February 28, 2005, in the antidumping duty review of Certain Hot-Rolled Carbon Steel Flat Products from India; the submission from Agro Dutch Industries Limited (''Agro Dutch''), dated May 24, 2005, at Exhibit B-1, in the antidumping duty administrative review of Certain Preserved Mushrooms from India; and the submission from Kejriwal Paper Ltd. (''Kejriwal''), dated January 9, 2006, in the antidumping duty review of Lined Paper from India. (The information used to derive brokerage and handling surrogate values from Essar Steel's February 28, 2005 U.S. sales listing, Exhibit B–1 of Agro Dutch's May 24, 2005 submission, and Kejriwal's January 9, 2006 submission is on the record of this proceeding. *See* Factors Valuation Memorandum at Attachment 3.) Use of these averages is consistent with the Department's normal practice to calculate brokerage and handling expenses. The Department's preference is to average these data sources because they represent values for numerous transactions that are available for a range of products and minimize the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a range of products, values, and special circumstances of a single transaction. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision

memo at Comment 5. *See also* Factor Valuation Memorandum.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	Margin (percent)
Forever Holdings	0%
Since Hardware (Guangzhou) Co., Ltd.	1.53 %

For details on the calculation of the antidumping duty weighted-average margin for Since Hardware and Forever Holdings, see the respective Since Hardware Analysis Memorandum and the Forever Holdings Analysis Memorandum. Public versions of these memoranda are on file in the Department's Central Records Unit, Room 1117 of the main commerce building (''CRU'').

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific *ad valorem* assessment rates for ironing tables from the PRC based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (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 157.68 percent (*see Ironing Tables Order*); 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, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first workday thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20921 Filed 9–8–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of

the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC). The review covers various exporters. The period of review (POR) is August 1, 2006, through July 31, 2007.

We have preliminarily determined that sales have been made at prices below normal value by companies subject to this review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Kristin Case (Nozawa), George Callen (Rally), or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3174, (202) 482–0180, or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the Department published the antidumping duty order on PRCBs from the PRC. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 48201 (August 9, 2004). In accordance with 19 CFR 351.213(b), the Department received requests for review for the following producers/exporters: Crown Polyethylene Products International Limited (Crown), Dongguan Qiatou Samson Plastic Manufactory Co. (Samson), Everfaith International (Shanghai) Ltd. (Everfaith), Sea Lake Polyethylene Enterprises, Ltd. (Sea Lake), Shanghai Glopack, Inc. (Glopack), Shanghai Hua Yue Packaging Products (Hua Yue), Shanghai Yafu Plastics Industry Co., Ltd. (Yafu), Dongguan Nozawa Plastics Products Co., Ltd., and United Power Packaging, Ltd. (collectively, Nozawa), and Rally Plastics Co., Ltd. (Rally). In accordance with 19 CFR 351.213(g) and 19 CFR 351.221(b) we published a notice of initiation of administrative review of these companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007) (*Initiation Notice*).

On September 28, 2007, Crown withdrew its request for review. On October 22, 2007, Everfaith and Hua Yue withdrew their requests for review. On December 26, 2007, Sea Lake and Glopack withdrew their requests for review. Also, on January 17, 2008, Asia Dynamics, Inc., withdrew its request for review of Yafu. In accordance with 19 CFR 351.213(d)(1), we rescinded this administrative review with respect to Crown, Everfaith, Hua Yue, Sea Lake, Glopack, and Yafu. See Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review, 73 FR 8031 (February 12, 2008).

Since initiation of the review, we extended the due date for completion of these preliminary results from May 2, 2008, to September 2, 2008. See *Polyethylene Retail Carrier Bags from the People's Republic of China; Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 22337 (April 25, 2008).

The POR is August 1, 2006, through July 31, 2007. We are conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to this antidumping duty order is PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Selection of Respondents

Due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for individual examination. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act, permits the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be examined reasonably. Accordingly, on September 18, 2007, we requested information concerning the quantity and value of sales to the United States from the nine exporters/producers listed in the *Initiation Notice*. Based upon responses to the Q&V questionnaires, the Department selected Nozawa and Rally for individual examination in this administrative review on October 31, 2007. *See* Memorandum to Abdelali Elouradia entitled ''Antidumping Duty Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Selection of Mandatory Respondents'' dated October 31, 2007.

Verification

As provided in section 782(i) of the Act, we have verified information provided by Nozawa using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the examination of records pertaining to further-manufacturing operations. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit, Room 1117 of the main Department building.

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market-economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we have calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

As explained above, a designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *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 the *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).

The Department's separate-rate test determines whether the exporters are independent from government control and does not consider, in general, macroeconomic or border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

Firms that were assigned a separate rate in the most recent segment of this proceeding in which they participated can provide certification that they continue to meet the criteria for obtaining a separate rate. Nozawa and Rally participated in the 2005–2006 administrative review of the order on PRCBs from the PRC and received separate rates. For this review Nozawa and Rally provided certifications that they continue to meet the criteria for obtaining a separate rate. See Nozawa's and Rally's October 15, 2007, separate-rate certifications.

On September 18, 2007, the Department issued a separate-rate certification/application to Samson. See *2006–2007 Administrative Review of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the People's Republic of China*, dated September 18, 2007 (separate-rate letter). On October 16, 2007, the Department received a separate-rate application from Samson. The Department issued a supplemental questionnaire to Samson concerning its separate-rate application on March 25, 2008. The due date for responding to the supplemental questionnaire was April 8, 2008. Samson did not respond to the supplemental questionnaire. In our September 18, 2007, letter, we notified applicants that incomplete applications may demonstrate that the applicant does not qualify for a separate rate. See separate-rate letter, Attachment 2, at 5. Because Samson did not respond to the supplemental questionnaire, we have preliminarily determined that Samson is not separate from the PRC-wide entity and thus will receive the PRC-wide rate.

Surrogate Country

When the Department analyzes imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production (FOP), valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. On March 18, 2008, the Department's Office of Policy issued a memorandum identifying India as being at a level of economic development comparable to the PRC for the POR. See Memorandum entitled ''Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Request for a List of Surrogate Countries,'' dated March 18, 2008.

In the Department's March 26, 2008, letter to interested parties requesting surrogate-country and surrogate-value comments, the Department indicated that India is among the countries comparable to the PRC in terms of overall economic development. In addition, based on publicly available information placed on the record (*i.e.*, export data), India is a significant producer of the subject merchandise. *See* Memorandum entitled ''Polyethylene Retail Carrier Bags from the People's Republic of China: Selection of a Surrogate Country,'' dated August 28, 2008.

Furthermore, India has been the primary surrogate country in determinations for past segments of this proceeding and both Nozawa and the Polyethylene Retail Carrier Bag Committee[1] submitted surrogate values based on Indian data that are contemporaneous to the POR, giving further credence to the use of India as a surrogate country. See, *e.g., Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 72 FR 51588 (September 10, 2007). The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum entitled ''Polyethylene Retail Carrier Bags from the People's Republic of China: Surrogate-Values Memorandum,'' dated September 2, 2008 (Surrogate-Value Memorandum).

U.S. Price

A.Export Price

In accordance with section 772(a) of the Act, we based U.S. price on the export price (EP) for sales to the United States by Rally and certain sales by Nozawa because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (CEP) was not otherwise warranted. We calculated EP for Nozawa and Rally based on the prices to unaffiliated purchasers in the United States.

[1] Consisting of Hilex Poly Company, LLC, and the Superbag Corporation (collectively, the petitioners).

For Nozawa, in accordance with section 772(c) of the Act, we first added gross unit price adjustments and then deducted from the price to unaffiliated purchasers, where appropriate, foreign inland freight, brokerage and handling, international freight, and marine insurance. See Memorandum from Kristin Case to the File, ''Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results Analysis Memorandum for Dongguan Nozawa Plastic Products Co., Ltd. and United Power Packaging Ltd.,'' dated September 2, 2008 (Nozawa Preliminary Analysis Memorandum).

For Rally, also in accordance with section 772(c) of the Act, we first added gross unit price adjustments and then deducted from the price to unaffiliated purchasers, where appropriate, foreign inland freight, brokerage and handling, international freight, and marine insurance. *See* Memorandum from George Callen to the File, ''Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results Analysis Memorandum for Rally Plastics Co., Ltd.,'' dated September 2, 2008. Consistent with *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) (*OJ Brazil Final*), and accompanying Issues and Decision Memorandum at Comment 7, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise. We also incorporated packing-related revenue as an offset to packing expenses because these items relate to the packing of subject merchandise (see *OJ Brazil Final*).

B. Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of Nozawa's sales because Nozawa sold its subject merchandise to its affiliated companies in the United States, Kal Pac Corporation (Kal Pac) and Packaging Solutions, Inc. (PSI), which, in turn, made the first sales of subject merchandise to unaffiliated U.S. customers. In addition, Nozawa reported that PSI made sales of subject merchandise which it further manufactured in the United States.

We added various revenue items to the gross unit price. See Nozawa Preliminary Analysis Memorandum at 2. Consistent with *OJ Brazil Final*, we have incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise. In accordance with section 772(c)(2) of the Act, we made deductions from Nozawa's starting price for early-payment discounts, rebates, foreign inland freight from the plant to the port of exportation, international freight, marine insurance, brokerage and handling, U.S. devanning expense, U.S. duty, inland freight from the warehouse to the unaffiliated U.S. customer, commissions, warranties, and return adjustments. Where foreign movement expenses or international movement expenses were provided by NME service providers or for which Nozawa paid in an NME currency, we valued these services using surrogate values. *See* Surrogate-Value Memorandum. For those expenses that were provided by a market-economy provider and for which Nozawa paid in market-economy currency, we deducted the actual expenses incurred. *See* Nozawa Preliminary Analysis Memorandum. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs, and U.S. indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. We calculated Nozawa's credit expenses and inventory carrying costs based on the Federal Reserve short-term rate because Nozawa reported that neither Kal Pac nor PSI had short-term borrowings during the POR.

We also deducted an amount for further-manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act. To calculate the cost of further manufacturing in the United States, we relied on PSI's reported cost of materials, labor, overhead, general and administrative expenses, and financial expenses of the further-manufactured materials. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

C. Surrogate Values for Expenses Incurred in the PRC for U.S. Sales

Nozawa and Rally reported that, for certain U.S. sales, foreign inland freight was provided by an NME vendor or they paid for freight using an NME currency. In such instances, we based the deduction of these charges on surrogate values. We valued foreign inland freight with the surrogate value for truck freight. For foreign brokerage and handling, marine insurance, and international freight, Nozawa and Rally reported using market-economy vendors and stated that they paid these expenses in a market-economy currency. Where movement services were provided by a market-economy vendor and the respondents paid in a market-economy currency, we deducted the actual cost per kilogram of the freight. *See* Surrogate-Value Memorandum.

Normal Value

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the normal value using an FOP methodology if the merchandise is exported from a NME country and the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases normal value on the FOPs because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 39744 (July 11, 2005) (unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 16, 2006)) (*Tapered Roller Bearings*).

The FOPs for PRCBs include the following elements: (1) quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; (5) packing materials. We used the FOPs reported by the respondents for materials, labor, energy, by-products, and packing.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market-economy country and pays for it in a market-economy currency, the Department will normally value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1); see also Lasko Metal Products v. United States, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs). Where a

portion of the input is purchased from a market-economy supplier and the remainder from an NME supplier, the Department will normally use the price paid for the inputs sourced from market-economy suppliers to value all of the input, provided the volume of the market-economy inputs as a share of total purchases from all sources is ''meaningful.'' See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997), and *Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001). See also 19 CFR 351.408(c)(1).

B. Factor Methodology

During the POR, Nozawa did not produce certain types of merchandise that it sold during the POR. Consequently, the original FOP database Nozawa submitted did not contain FOPs for those models sold but not produced by Nozawa during this POR. Because the vast majority of the models Nozawa sold were produced during this POR or the prior POR, Nozawa also submitted on the record of this review the FOP database from the prior review (*i.e.*, the 2005/2006 review). In addition, Nozawa submitted an FOP database incorporating the FOPs for all models sold during the POR, using both production data from this and the prior POR. Therefore, for purposes of factor valuation, the Department has used the FOP database incorporating all models sold during the POR. Nozawa based certain FOP data on similar models where it did not produce the model in either this or the prior POR.

The Department reviewed Nozawa's identification of the most similar matches for the models it sold but did not produce during the previous or this POR. In doing so, we determined the product characteristics which have the most significant impact on the cost of materials and then compared all product characteristics of the actual models to the product characteristics of the proposed matching models. We found that Nozawa's proposed matches were identical in the most significant product characteristics and had some insignificant differences in other characteristics. Therefore, we accepted Nozawa's assignment of the most similar model designations for those products it sold but did not produce during the POR. See Nozawa Preliminary Analysis Memorandum.

C. FOP Valuation

In accordance with section 773(c) of the Act, we calculated normal value based on the FOPs reported by respondents for the POR. To calculate normal value, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.

It is the Department's practice to calculate price-index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index for the subject country. See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 66910 (November 17, 2006). Therefore, where we could not obtain publicly available information contemporaneous with the POR, we adjusted surrogate values using the Wholesale Price Index (WPI) for India, as published in the *International Financial Statistics* of the International Monetary Fund.

Except as indicated below, we valued raw material inputs using the weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas (WTA), available at http://www.gtis.com/wta.htm. For those surrogate values based upon Indian import statistics, we disregarded prices which we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; see also *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 4. The legislative history reflects the Department's practice that, in making its determination as to whether input values may be subsidized, the Department does not conduct a formal investigation; rather, the Department bases its decision on information that is available to it at the time it makes its determination. See H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. Therefore, based on the information currently available, we have not used prices from these countries in calculating the surrogate values based on Indian import data.

We have also disregarded Indian import data concerning raw materials from countries that we have previously determined to be NME countries as well as imports originating from ''unspecified'' countries because we could not be certain that they were not from either an NME or a country with generally available export subsidies. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), and *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005) (unchanged in the final results). For a comprehensive list of the sources and data we used to determine the surrogate vales for the FOPs, by-products, and the surrogate financial ratios for factory overhead, selling, general and administrative expenses (SG&A), and profit, see Surrogate-Value Memorandum.

Where appropriate, we adjusted the Indian import prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import prices a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Indian import data as the basis of the surrogate value, we calculated inland freight based on the reported distance from the supplier to the factory. We valued truck freight expenses using a per-unit average rate calculated from data on the following Web site: http://www.infobanc.com/logistics/logtruck.htm. See Surrogate-Value Memorandum.

The logistics section of this Web site contains inland-freight truck rates between many large Indian cities. Because this value is not contemporaneous with the POR, we deflated the rate using WPI. *See* Surrogate-Value Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled Electricity Tariff&Duty and Average Rates of Electricity Supply in India, dated July 2006. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. Because the rates are not contemporaneous with the POR, we deflated the values using the WPI. See Surrogate-Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's web site. *See Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795, 27796 (May 14, 2008) (available at http://ia.ita.doc.gov/wages). The source of these wage-rate data on the Import Administration's website is the Yearbook of Labour Statistics 2003, ILO (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2003 through 2004. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. *See* Surrogate-Value Memorandum.

To value factory overhead, SG&A, and profit values, we used information from M/S Synthetic Packers Private Ltd. for the fiscal year ending March 31, 2007. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs, SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture), and profit as a percentage of the cost of manufacture plus SG&A. *See* Surrogate-Value Memorandum.

For packing materials, we used the per-kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC suppliers and the respondents' production facilities. *See* Surrogate-Value Memorandum.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following percentage weighted-average dumping margins exist for the period August 1, 2006, through July 31, 2007:

Manufacturer/Exporter	Percent Margin
Dongguan Nozawa Plastics Products Co., Ltd., andUnited Power Packaging, Ltd.	2.30
Rally Plastics Co., Ltd.	18.11
PRC-wide Entity	77.57

[2] The PRC-wide entity includes Samson.

Comments

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit publicly available information to value factors no later than 20 days after the date of publication of these preliminary results of review. See 19 CFR 351.301(c)(3)(ii). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific (or customer-specific) assessment rates for merchandise subject to this review.

With respect to sales by Rally and certain sales by Nozawa, for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

In accordance with 19 CFR 351.212(b)(1), for Nozawa's CEP sales, we have calculated an importer-specific assessment rate by dividing the total dumping duties due by the entered value of CEP sales we analyzed. We will direct CBP to liquidate the appropriate entries at this rate.

We will instruct CBP to liquidate entries containing merchandise from the PRC-wide entity at the PRC-wide rate we determine in the final results of review.

We will issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of PRCBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) for subject merchandise exported by Nozawa and Rally, the cash-deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 77.57 percent; (4) for all non–PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when

imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20919 Filed 9–8–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand. The review covers five exporters/producers. The period of review is August 1, 2006, through July 31, 2007.

We have preliminarily determined that sales have been made at prices below normal value by various companies subject to this review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the Department published in the **Federal Register** the antidumping duty order on PRCBs from Thailand. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 48204 (August 9, 2004). In accordance with 19 CFR 351.213(b), we received requests for an administrative review for five companies. In accordance with 19 CFR 351.213(g) and 19 CFR 351.221(b), we published a notice of initiation of an administrative review of these companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428, 54429 (September 25, 2007) (*Initiation Notice*).[1]

Since initiation of the review, we extended the due date for completion of these preliminary results from May 2, 2008, to September 2, 2008. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand*, 73 FR 15724 (March 25, 2008), and *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand*, 73 FR 29738 (May 22, 2008).

The period of review (POR) is August 1, 2006, through July 31, 2007. We are conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

[1] We stated that the review covers the following companies: King Pac Industrial Co., Ltd., King Pak Ind. Co., Ltd., Kor Ratthanakit Co., Ltd., Master Packaging Co., Ltd., Naraipak Co., Ltd., and Poly Plast (Thailand) Co., Ltd. *Id.* Although we listed six companies in the *Initiation Notice*, we consider King Pac Industrial Co., Ltd., and King Pak Ind. Co., Ltd., to be alternative spellings of the name of one company. See the April 3, 2006, Memorandum from Catherine Cartsos to File entitled ''Administrative Review of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from Thailand (1/26/04-7/31/05) - Different Spellings for King Pac Industrial Co., Ltd.,'' which is on file in the Central Records Unit, room 1117 of the main Commerce building. Accordingly, we effectively initiated an administrative review of five companies.

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

As a result of changes to the *Harmonized Tariff Schedule of the United States* (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Selection of Respondents

Due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for individual examination. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or exporters and

producers accounting for the largest volume of subject merchandise from the exporting country that can be examined reasonably. Accordingly, on October 4, 2007, we requested information concerning the quantity and value of sales to the United States from the five exporters/producers listed in the *Initiation Notice*. We received responses from all of the exporters/producers. We also examined import data from CBP concerning unliquidated entries of merchandise subject to the antidumping duty order.

Based on our analysis of the responses and import data obtained from CBP, we determined that King Pac Industrial Co., Ltd. (King Pac), Naraipak Co., Ltd., and Narai Packaging (Thailand) Ltd. (collectively NPG), and Poly Plast (Thailand) Co., Ltd. (Poly Plast), were the three largest exporters/producers during the POR. Specifically, we determined that these exporters/producers accounted for a majority of the total reported quantity of imports of the subject merchandise from the requested companies to the United States during the POR and a majority of the total quantity from the requested companies reported in the CBP data. Accordingly, we chose to examine these three companies as accounting for the largest volume of subject merchandise from the exporting country that can reasonably be examined. See Memorandum entitled ''Polyethylene Retail Carrier Bags from Thailand - Respondent Selection'' dated December 6, 2007.

On March 27, 2008, the Department determined that it had the resources available to examine the remaining respondent,[2] Master Packaging Co., Ltd. (Master Packaging), individually. See Memorandum entitled ''Polyethylene Retail Carrier Bags from Thailand: Selection of Master Packaging as a Mandatory Respondent,'' dated March 27, 2008.

Intent to Rescind Review in Part

In an October 25, 2007, submission, Kor Ratthanakit Co., Ltd. (Kor Ratthanakit), indicated that it had no shipments of subject merchandise to the United States during the POR. Our review of information from CBP supports Kor Ratthanakit's claim that there were no entries of its merchandise subject to the order into the United States during the POR. See Memorandum to the File, ''U.S. Customs and Border Protection Data,'' dated December 3, 2007. Because we preliminarily find that there were no imports from Kor Ratthanakit during the POR, we intend to rescind the administrative review with respect to this company. If we continue to find at the time of our final results of administrative review that there were no imports of PRCBs from Thailand from Kor Ratthanakit, we will rescind our review of Kor Ratthanakit.

Verification

As provided in section 782(i) of the Act, we have verified sales and cost information provided by NPG and Poly Plast using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, dated June 23 and August 13, 2008, for Poly Plast and dated August 5 and August 13, 2008, for NPG, and which are on file in the Central Records Unit, room 1117 of the main Commerce building.

Use of Adverse Facts Available

Section 776(a) of the Act provides that, if necessary information is not available on the record or if an interested party (1) withholds information that has been requested by the Department (2) fails to provide such information by the deadlines established, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act (3) significantly impedes the proceeding or (4) provides such information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department, provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall provide that person, to the extent practicable, with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. The purpose of the adverse call, as explained in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), is ''to ensure that the party does not obtain a more favorable result by failing to cooperate {to the best of its ability} than if it had cooperated fully.'' See SAA at 870, reprinted in 1994 U.S.C.C.A.N. 4040, 4199. Further, as explained in the SAA, in employing adverse inferences the Department will consider ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

King Pac and Master Packaging

On December 6, 2007, we sent a questionnaire to King Pac, one of the companies which we had selected for individual examination, seeking information related to King Pac's corporate structure and its production and sales of PRCBs, information which is necessary for us to complete the administrative review. King Pac did not respond to the questionnaire.

On March 27, 2008, we sent an antidumping questionnaire to Master Packaging and requested that it respond by May 5, 2008. Subsequently, at the respondent's request, we granted Master Packaging an extension of time to respond. On May 20, 2008, we received Master Packaging's questionnaire response, which we rejected on June 11, 2008, due to filing deficiencies; we provided Master Packaging an opportunity to resubmit its response in accordance with our regulations by June 24, 2008. Master Packaging submitted its response in accordance with the regulations on June 24, 2008. On June 27, 2008, we requested that Master Packaging submit the electronic versions of both its home-market and U.S. sales lists which should have been submitted with its June 24 response. On July 7, 2008, Master Packaging submitted the electronic versions of its

[2] As discussed below, we intend to rescind the administrative review with respect to Kor Ratthanakit Co., Ltd.

sales lists. On July 9, 2008, after reviewing Master Packaging's resubmitted questionnaire response, we issued Master Packaging a supplemental questionnaire. Master Packaging did not respond to our supplemental questionnaire or request an extension of time to do so.

Because King Pac and Master Packaging have failed to provide the information we requested and thus have significantly impeded this proceeding, we must use facts available to establish their dumping margins. See section 776(a) of the Act. Furthermore, because King Pac could have provided correct and verifiable data about its corporate structure, production, and sales but did not do so, we determine that King Pac has failed to cooperate by not acting to the best of its ability. Therefore, we conclude that the use of an adverse inference is warranted with respect to King Pac. See section 776(b) of the Act and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (CAFC 2003). Additionally, because Master Packaging could have provided correct and verifiable data in response to our supplemental questionnaire but did not do so, we determine that Master Packaging has failed to cooperate by not acting to the best of its ability. Therefore, we conclude that the use of an adverse inference is warranted with respect to Master Packaging. *Id.*

As adverse facts available (AFA), we have preliminarily assigned King Pac and Master Packaging the highest rate found in the less-than-fair-value investigation, which was 122.88 percent. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122, 34125 (June 18, 2004) (*Final LTFV*). We applied this rate to Zippac Co., Ltd. (Zippac), for the less-than-fair-value investigation. *Id.*, 69 FR at 34123–34124. We also applied this rate to King Pac, which we collapsed with Zippac, for the 2004–2005 and 2005–2006 administrative reviews. See *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53406–53407 (September 11, 2006) (collapsing King Pac, Dpac Industrial Co., Ltd., Zippac, and King Bag Co.); *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982, 1983 (January 17, 2007) (*2005–2006 Final Results*); and *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007).

When a respondent is not cooperative, such as King Pac and Master Packaging here, the Department has the discretion to presume that the highest prior margin reflects the current margins. See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (CAFC 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990)). If this were not the case, the party would have produced current information showing the margin to be less. See *Rhone Poulenc*, 899 F.2d at 1190. Further, by using the highest prior antidumping duty margin we offer the assurance that the exporter will not benefit from refusing to provide information and we apply an antidumping duty rate that bears some relationship to past practices by this company as it is part of the industry in question. See *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1346 (CIT 2005) (citing *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (CAFC 1997)).

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary 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 concerning the subject merchandise.'' See SAA at 870, 1994 U.S.C.C.A.N. at 4199. As clarified in the SAA, ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information. As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information. See SAA at 869, 1994 U.S.C.C.A.N. at 4198. Further, 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 or review. See 19 CFR 351.308(d) and SAA at 870, 1994 U.S.C.C.A.N. at 4199.

With respect to the reliability aspect of corroboration, the Department found the rate of 122.88 percent to be reliable in the investigation. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 3552, 3553–3554 (January 26, 2004) (unchanged). There, the Department pointed out that the rate was calculated from source documents included with the petition, namely, a price quotation for various sizes of PRCBs commonly produced in Thailand, import statistics, and affidavits from company officials, all from a different Thai producer of subject merchandise. Because the information is supported by source documents, we preliminarily determine that the information is still reliable. See Memorandum to the File entitled ''Polyethylene Retail Carrier Bags from Thailand: Inclusion of Memorandum, dated January 16, 2004, to the record of this administrative review'' dated August 11, 2008 (AFA Memorandum).

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. In the investigation, the Department determined that, because the price quote reflected commercial practices of the particular industry during the period of investigation, the information was relevant to mandatory respondents which refused to participate in the investigation. See AFA Memorandum. No party contested the application of that rate in the investigation. *Id.* Furthermore, the rate of 122.88 percent is King Pac's current rate and has been applied to Zippac since the less-than-fair-value investigation. Therefore, we find this rate to continue to have relevance.

Poly Plast

We found at verification that Poly Plast did not report foreign bank charges for all sales to two major U.S. customers. See Poly Plast verification report, dated June 23, 2008, at page 13–15. Because foreign bank charges vary by invoice, we do not have complete and accurate information pertaining to these expenses. Accordingly, because Poly Plast failed to report these expenses, the use of facts available is necessary. See section 776(a)(2)(D) of the Act. In addition, Poly Plast had the documents necessary to report the correct foreign bank charges for its U.S. sales. See Poly Plast verification report at exhibits 6, 7, and 11 which include documentation such as the bank's credit advice. We used these documents to ascertain the actual foreign bank charges for the particular U.S. sales we examined in detail. Because Poly Plast did not report this expense for a number of U.S. sales, we find that Poly Plast did not act to the best of its ability in reporting these expenses and, accordingly, the use of an adverse

inference is necessary. See section 776(b) of the Act and *Nippon Steel*, 337 F.3d at 1382–83. As partial adverse facts available, we used the highest reported value for foreign bank charges for sales to two U.S. customers for which these expenses were not reported.

Importer Request

On January 25, 2008, prior to the deadline for the submission of factual information, KYD, Inc. (KYD), an importer of subject merchandise, submitted information concerning its purchases of subject merchandise.[3] KYD requested that the Department calculate an importer-specific assessment rate for KYD based on KYD's information because one of its former suppliers, King Pac, did not respond to the Department's questionnaire. KYD submitted its information in a form resembling a response to Section C of the Department's standard questionnaire for U.S. sales and included copies of its relevant purchase orders and supplier invoices. Additionally, KYD explained the sales, shipping, and payment terms associated with its purchases. Because most of the information upon which the Department relies to calculate an antidumping margin and assessment rate was not available to KYD—specifically, home-market sales, cost-of-production, and complete U.S. sales information—KYD suggested that the Department use data collected from other respondents as a surrogate. Because we do not have all of the information that is necessary to calculate an accurate margin for the supplier(s) from which KYD purchased subject merchandise during the POR, however, we cannot calculate an importer-specific assessment rate for KYD.

Export Price

We calculated dumping margins for NPG and Poly Plast as described below.

For the price to the United States for NPG and Poly Plast, we used export price (EP) as defined in section 772(a) of the Act. We calculated EP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions, as appropriate, for discounts and rebates. See section 772(d) of the Act. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Comparison-Market Sales

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by NPG in Thailand was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. NPG's quantity of sales in Thailand was greater than five percent of its quantity of sales to the U.S. market. See section 773(a)(1)(c) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in Thailand in the usual commercial quantities and in the ordinary course of trade and at the same level of trade as the U.S. sales.

Poly Plast did not have a viable home market within the meaning of section 773(a)(1)(B)(ii)(II) of the Act. Poly Plast reported its quantities of sales in third-country markets and we determined that Angola was a viable third-country market for Poly Plast under section 773(a)(1)(C) of the Act. Therefore, we based normal value for Poly Plast's U.S. sales on the prices at which the foreign like product was first sold for consumption in Angola in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales. See section 773(a)(1)(C) of the Act.

Cost of Production

In accordance with section 773(b) of the Act, we disregarded the below-cost sales of NPG in the most recently completed administrative review of this company. See *2005–2006 Final Results*. Therefore, we have reasonable grounds to believe or suspect that NPG's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of NPG's sales in the comparison market in this review.

The petitioners in this proceeding filed an allegation that Poly Plast made sales in the comparison market at prices below the COP. Based on the information in the allegation, we found that we had reasonable grounds to believe or suspect that sales of the foreign like product were made by Poly Plast at prices that are less than the COP of the product. See section 773(b)(2)(4)(i) of the Act and Memorandum entitled ''Administrative Review of Antidumping Duty Order on Polyethylene Retail Carrier Bags from Thailand: Request to Initiate Cost Investigation for Poly Plast (Thailand) Co., Ltd.,'' dated March 4, 2008. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP investigation of sales made by Poly Plast in its comparison market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison-market sales and COP information provided by each respondent in its questionnaire responses. We made some adjustments to the COP information based on our findings at the cost verifications of NPG and Poly Plast. These adjustments are detailed in Memoranda to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Naraipak Co., Ltd.'' and ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Poly Plast (Thailand) Co., Ltd.'', dated September 2, 2008.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether comparison-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model-specific COPs to the reported comparison-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to

[3] We determined that KYD had not justified many of its requests for proprietary treatment of the information in its January 25 submission. On April 1, 2008, we requested that KYD re-submit its document with adequate or revised claims for proprietary treatment of its information. KYD re-submitted the document on April 8, 2008.

sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See the Department's analysis memoranda for Poly Plast and NPG, dated September 2, 2008. Based on this test, we disregarded below-cost sales with respect to Poly Plast and NPG.

Model-Match Methodology

We compared U.S. sales with sales of the foreign like product in the comparison market. Specifically, in making our comparisons, we used the following methodology. If an identical comparison-market model was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the COP test of the identical product during the relevant or contemporaneous month. We calculated the weighted-average comparison-market prices on a level of trade-specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondents in the following order of importance: (1) quality; (2) bag type; (3) length; (4) width; (5) gusset; (6) thickness; (7) percentage of high-density resin; (8) percentage of low-density resin; (9) percentage of linear low-density resin; (10) percentage of color concentrate; (11) percentage of ink coverage; (12) number of ink colors; and (13) number of sides printed.

Normal Value

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices. See 19 CFR 351.403(c). Where affiliated-party sales were reported, we excluded from our analysis sales to affiliated customers for consumption in the comparison market that we determined not to be at arm's-length prices. To test whether these sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department's practice). We included those sales to affiliated parties that were made at arm's-length prices in our calculations of normal value.

Comparison-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from and adding U.S. direct selling expenses to normal value. We also made adjustments, if applicable, for comparison-market indirect selling expenses to offset U.S. commissions in EP calculations.

With respect to NPG, we found at the sales verification that commissions it had reported for sales made by Naraipak through an affiliated selling agent were not based on selling expenses actually incurred by the agent. Thus, we have not accepted NPG's claim for a commission on these sales. In addition, we have not accepted bank charges for numerous home-market Naraipak sales that NPG first submitted to the Department as a minor correction at the sales verification. NPG asserted that, until that point, it had inadvertently omitted these charges from its reported home-market sales data. Because we find these charges to constitute untimely-filed new factual information, we have not accepted them in our calculation of normal value. Similarly, NPG submitted revised packing costs for Naraipak's home-market sales as a minor correction at the sales verification, asserting that it had inadvertently failed to update the packing costs at the time it filed revised cost data for a supplemental questionnaire due prior to the start of verification. We have not accepted these revised packing costs, which we find to be untimely-filed new factual information.

With respect to Poly Plast, we found at verification, that 1) although it did not claim an adjustment to normal value, Poly Plast incurred foreign bank charges for a number of third-country sales and 2) Poly Plast claimed certain export charges in more than one data field for all third-country sales made in 2007, which resulted in Poly Plast either double-counting or partially double-counting these expenses for the sales in question. See Poly Plast verification report, dated June 23, 2008, at page 13–15. Poly Plast had the documents necessary to report the correct foreign bank charges and certain export charges for its third-country sales. See Poly Plast verification report at exhibits 6, 7, and 11, which include documentation such as bills for terminal handling charges and bill-of-lading document fees, loading-certificate invoices, and broker's invoices. We used these documents to ascertain the actual foreign bank charges and actual export charges for the third-country sales we examined in detail. Because foreign bank charges and certain export charges vary by invoice, however, we do not have complete and accurate information pertaining to these expenses. Further, with respect to certain export charges, there is no way to distinguish these expenses from the other expenses (*i.e.*, brokerage and handling expenses) with which they were comingled and reported. Because there is no information on the record that enables us to calculate the expenses in question, we have not made the claimed adjustment for certain export charges Poly Plast reported for all third-country sales made in 2007.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value at the same level of trade as the EP sales. See the *Level of Trade* section below.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no comparable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the

ordinary course of trade for consumption in the comparison market.

As a result of findings at the cost verifications, we made some adjustments to the constructed-value information provided by NPG and Poly Plast. These adjustments are detailed in the Memoranda to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Naraipak Co., Ltd.,'' and ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Poly Plast (Thailand) Co., Ltd.,'' dated September 2, 2008.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences and level-of-trade differences. For comparisons to EP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from and adding U.S. direct selling expenses to constructed value. We also made adjustments, when applicable, for comparison-market indirect selling expenses to offset U.S. commissions in EP comparisons.

We calculated constructed value at the same level of trade as the EP.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales. The normal-value level of trade is that of the starting-price sales in the comparison market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether comparison-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Neither NPG nor Poly Plast reported any significant differences in selling functions between different channels of distribution or customer type in either their comparison or U.S. markets. Therefore, we determined that all comparison-market sales were made at one level of trade for each company. Moreover, we determined that all comparison-market sales of the companies were made at the same level of trade as EP sales.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average dumping margins on PRCBs from Thailand exist for the period August 1, 2006, through July 31, 2007:

Producer/Exporter	Percent Margin
King Pac (aka King Pak)	122.88
Master Packaging	122.88
NPG	1.84
Poly Plast	8.84

Comments

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2). The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review.

With respect to sales by NPG and Poly Plast, for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

For companies for which we are relying on total AFA to establish a dumping margin, we will instruct CBP to apply the assigned dumping margins to all entries of subject merchandise during the POR that were produced or exported by the companies.

We will issue liquidation instructions to CBP 15 days after publication of the final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate

established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 2.80 percent, the all-others rate for this proceeding. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20928 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2008, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar (''SSB'') from India. This review covers sales of SSB from India with respect to two producers/exporters: D.H. Exports Pvt. Ltd. (''DHE'') and Sunflag Iron & Steel Co. Ltd. (''Sunflag''), during the period February 1, 2006, through January 31, 2007.

We have noted the changes made since the preliminary results in the ''Changes Since the Preliminary Results'' section, below. The final results are listed below in the ''Final Results of Review'' section.

DATES: *Effective Date:* September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Scott Holland, 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 and (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department published in the **Federal Register** the antidumping duty order on SSB from India. *See Antidumping Duty Orders: Stainless Steel Bar From Brazil, India and Japan,* 60 FR 9661 (February 21, 1995). On February 2, 2007, the Department published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of this order for the period February 1, 2006, through January 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 72 FR 5007 (February 2, 2007). The Department published in the **Federal Register** the preliminary results of this review on March 7, 2008. *See Stainless Steel Bar From India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12382 (March 7, 2008) (''Preliminary Results''). On March 20, 2008, the Department published a correction notice to the Preliminary Results. *See Stainless Steel Bar From India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 15049 (March 20, 2008).

Following the Preliminary Results, the Department issued two supplemental questionnaires to both DHE and Sunflag. The Department received DHE's responses on March 20, 2008, and April 2, 2008. The Department received Sunflag's responses on April 2, 2008, and July 7, 2008. On June 24, 2008, the Department published a notice extending the deadline for these final results to September 3, 2008. *See Stainless Steel Bar From India: Notice of Extension of Time Limit for the Final Results of the 2006–2007 Antidumping Duty Administrative Review,* 73 FR 35639 (June 24, 2008).

We invited interested parties to comment on the Preliminary Results. On July 16, 2008, the Petitioners [1] and DHE submitted case briefs.[2] In its case brief, DHE requested that the Department consider the purchase order date as the U.S. date of sale, rather than the invoice date. To support this request, DHE provided the Department with unsolicited new information in the form of a revised U.S. sales database containing purchase order dates for its U.S. sales. On July 17, 2008, the Petitioners filed a rebuttal brief. The Petitioners requested that the Department reject and return to DHE the new factual information submitted in its case brief. According to the Petitioners, the Department did not request this new date of sale information and the deadline for the submission of new factual information had passed, as per 19 CFR 351.301(b)(2). On July 17, 2008, the Department rejected DHE's case brief because it contained unsolicited new factual information. *See* July 17, 2008, Letter from Brandon Farlander to DHE, which is on file in the Central Records Unit (''CRU'') in room 1117 of the main Department building. The Department instructed DHE to re-file its case brief excluding the unsolicited new factual information relating to purchase order date. DHE submitted its revised case brief, excluding the unsolicited new factual information, on July 21, 2008.

On July 22, 2008, Sunflag filed a rebuttal brief. On August 8, 2008, the Department rejected Sunflag's July 22, 2008 (dated July 19, 2008) rebuttal brief because it contained unsolicited new factual information relating to certain rent paid to affiliate Ridge Farm Developers. *See* August 8, 2008, Letter from Brandon Farlander to Sunflag, which is on file in the CRU in room 1117 of the main Department building. The Department instructed Sunflag to re-file its rebuttal brief excluding the unsolicited new factual information. On August 18, 2008, the Department received Sunflag's revised rebuttal brief, excluding the unsolicited new factual information.

Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross-section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished

[1] Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc.

[2] DHE incorrectly called this submission its ''rebuttal brief.''

SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross-section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this order. *See* Memorandum from Team to Barbara E. Tillman, ''Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling,'' dated May 23, 2005, which is on file in the Central Records Unit in room 1117 of the main Department building. *See also Notice of Scope Rulings,* 70 FR 55110 (September 20, 2005).

Period of Review

The period of review (''POR'') is February 1, 2006, through January 31, 2007.

Applicable Statute

Unless otherwise indicated, all statutory citations are to the Tariff Act of 1930, as amended (''the Act''). In addition, all references to the Department of Commerce's regulations are to 19 CFR Part 351.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the September 3, 2008, ''Issues and Decision Memorandum for 2006–2007 Antidumping Duty Administrative Review of Stainless Steel Bar from India'' (''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU, which is located in room 1117 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made adjustments to the Preliminary Results calculations for DHE and Sunflag. Brief descriptions of the company-specific changes are discussed below.

A. DHE

On March 27, 2008, the Department requested that DHE report the per-unit entered value of subject merchandise that entered into the United States during the POR. DHE submitted this information on April 2, 2008. However, DHE calculated the per-unit entered value by dividing the total entered values for all shipments of subject merchandise during the POR by the sum of the total quantities entered during the POR, *i.e.*, a simple average of all shipments.

For the final results, we have re-calculated the per-unit entered value based upon a ratio of the invoice specific, total entered value, to the total quantity that is reflected on the U.S. Customs Form 7501 documentation supplied by DHE, rather than an average of all shipments. *See* Final Results Calculation Memorandum for D.H. Exports Pvt. Ltd., dated September 3, 2008.

B. Sunflag

For the final results, we are adjusting Sunflag's general and administrative expense ratio upward to account for rent paid to affiliate Ridge Farm Developers for leased office space. *See* Final Results Calculation Memorandum for Sunflag Iron & Steel Co. Ltd., dated September 3, 2008 (''Sunflag Final Calculation Memorandum''). We have also increased Sunflag's cost of production by including interest on an unsecured interest-free loan from an affiliate. *See* Sunflag Final Calculation Memorandum.

Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the cost of production (''COP''), we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales of that model were made in substantial quantities within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. Because we compared prices to the POR-average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, for both DHE and Sunflag, we disregarded these below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Final Results of Review

As a final result of our review, we find that the following weighted-average percentage margins exist for the period February 1, 2006, through January 31, 2007:

Exporter/Manufacturer	Weighted-average margin percentage
D.H. Exports Pvt. Ltd.	10.21
Sunflag Iron & Steel Co. Ltd.	6.08

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For DHE and Sunflag, the Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. We have used Sunflag's reported entered values for the final results. However, as noted above in the

''Changes Since the Preliminary Results'' section, we have adjusted DHE's reported entered values.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the Sunflag's entered values and DHE's adjusted entered values. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification applies to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following antidumping duty deposits are effective for all shipments of SSB from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the ''all others'' rate established in the less than fair value investigation. *See Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value,* 59 FR 66915 (December 28, 1994). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice 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 antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

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.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Decision Memorandum

Comments Relating to D.H. Exports Pvt. Ltd.

Comment 1: Alleged Missing Attachments
Comment 2: Direct Material Costs—Use of Pre-POR Costs

Comments Relating to Sunflag Iron & Steel Co. Ltd.

Comment 3: Sunflag's Ferrochrome Purchases from Affiliate Navbharat Ventures
Comment 4: Rent Sunflag Paid to Affiliate, Ridge Farm Developers, for New Delhi Office
Comment 5: Rent Sunflag Paid to Affiliate, Haryana Television, for Faridabad Office
Comment 6: Adjustment to Interest on Working Capital Loan
Comment 7: Imputed Interest on Unsecured Interest-Free Loan from Affiliate Sunflag Ltd. UK
Comment 8: Home Market Imputed Credit Expenses

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 9, 2008.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on wooden bedroom furniture from the Peoples Republic of China (''PRC''), received on July 11, 2008, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is January 1, 2008, through June 30, 2008.

FOR FURTHER INFORMATION CONTACT: Demitrios Kalogeropoulos or Robert Boiling, 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) 482–2623 and (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005). On July 11, 2008, we received a timely request for a new shipper review from Shanghai Fangjia Industry Co., Ltd. (''Shanghai Fangjia'') in accordance with 19 CFR 351.214(c) and 351.214(d)(2). Shanghai Fangjia has certified that it purchased from Jiangsu

Danyang Brilliant Furniture Co., Ltd. (''Brilliant Furniture'') all of the wooden bedroom furniture it exported which is the basis for its request for a new shipper review.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214( )(2), Shanghai Fangjia certified that it did not export wooden bedroom furniture to the United States during the period of investigation (''POI''). Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Shanghai Fangjia certified that, since the initiation of the investigation, it has not been affiliated with any exporter or producer who exported wooden bedroom furniture to the United States during the POT, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Shanghai Fangjia also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, the exporter submitted documentation establishing the following: (1) The date on which it first shipped wooden bedroom furniture for export to the United States and the date on which the wooden bedroom furniture was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) The date of its first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating this new shipper review for shipments of wooden bedroom furniture from the PRC produced and exported by Shanghai Fangjia.

The POR is January 1, 2008, through June 30, 2008. 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 90 days from the date of the preliminary results, unless extended. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of wooden bedroom furniture manufactured by Brilliant Furniture and exported by Shanghai Fangjia must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current PRC-wide rate of 216.01 percent.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: August 26, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–20541 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 29, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 2104.

Docket Number: 08–043. Applicant: Harvard University, 7 Divinity Ave., SF 267C, Cambridge, MA 02138. Instrument: Electron Microscope, Model Tecnai G2 F20 TWIN. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument is intended to be used to study macromolecular complexes involved in a variety of cellular functions. The high-resolution information obtained with the instrument will be used to elucidate the chemical structure of these biological molecules and connect the structures to their function. Application accepted by Commissioner of Customs: August 15, 2008.

Docket Number: 08–044. Applicant: Pennsylvania University, College of Medicine; 500 University Drive, Hershey, PA 17033. Instrument: Electron Microscope, Model JEM–1400. Manufacturer: JEOL, Ltd., Japan. Intended Use: This instrument will be used to study a wide range of biological materials, including biological samples of tissues from a variety of vertebrate species and from various organs. Specifically, the instrument will be used to identify detailed tissue structures in order to understand both normal physiology and pathophysiology. Application accepted by Commissioner of Customs: August 15, 2008.

Docket Number: 08–045. Applicant: University of Texas at Austin, 1 University Station, A4800, Austin, TX 78712. Instrument: Electron Microscope, Tecnai G2 Spirit BioTWIN. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to examine biological specimens using transmission electron microscopy. The instrument will be used for a wide variety of samples applications. Application accepted by Commissioner of Customs: August 21, 2008.

Dated: August 28, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E8–20545 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–936]

Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of circular welded carbon quality steel line pipe (line pipe) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or John Conniff, AD/CVD Operations, Office 3, Operations,

Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On April 3, 2008, the Department received the petition filed in proper form by the petitioners.[1] This investigation was initiated on April 23, 2008. *See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation*, 73 FR 23184 (April 29, 2008) (*Initiation Notice*), and accompanying Initiation Checklist.[2] On June 6, 2008, the Department postponed the deadline for the preliminary determination by 65 days to no later than September 2, 2008. *See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 32290 (June 6, 2008).

Due to the large number of producers and exporters of line pipe in the PRC, we determined that it was not possible to investigate individually each producer or exporter and, therefore, selected two producers/exporters of line pipe to be mandatory respondents: Huludao Steel Pipe Industrial Co., Ltd./ Huludao City Steel Pipe Industrial Co., Ltd. and Liaoning Northern Steel Pipe Co., Ltd. (Northern Steel) (collectively, respondents). *See* Memorandum from the Team through Melissa Skinner, Director, Office 3, Operations, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding ''Respondent Selection'' (May 16, 2008).[3]

On May 19, 2008, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (the GOC) and the mandatory respondents. On July 9, 2008, the Huludao Seven–Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies) submitted their respective responses to the initial CVD questionnaire. On July 10, 2008, the GOC submitted its initial questionnaire response. On July 14, 2008, Northern Steel submitted its response to the initial CVD questionnaire.

Regarding the GOC, we issued it supplemental questionnaires on August 5 and August 6, 2008, to which the GOC submitted a response on August 21, 2008.

Regarding the Huludao Companies, on July 17, 2008, we issued a supplemental questionnaire, to which they responded on July 28, 2008. On July 23, 2008, we issued a supplemental questionnaire to the Huludao Seven Star Group, which submitted its response on August 11, 2008. On July 24, 2008, we issued a supplemental questionnaire to Huludao Bohai Oil Pipe, which submitted its questionnaire response on August 12, 2008. On July 30, 2008, we issued a supplemental questionnaire to Huludao Steel Pipe, which submitted a response on August 18, 2008. On July 31 and August 7, 2008, we issued supplemental questionnaires to the Huludao Companies, which submitted their responses on August 15, 18, and 28, 2008, respectively.

On July 21, 2008, we issued a supplemental questionnaire to Northern Steel, to which it responded on August 6, 2008. On August 6 and 12, 2008, we issued additional supplemental questionnaires to Northern Steel; the company submitted its responses on August 14 and 26, 2008, respectively.

On June 24, 2008, petitioners submitted new subsidy allegations regarding four programs. On August 5, 2008, the Department initiated investigations of the four newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Melissa G. Skinner, Director, Office 3 Operations, regarding ''New Subsidy Allegations'' (August 5, 2008). Questionnaires regarding these newly alleged subsidies were sent to the GOC, Northern Steel, and the Huludao Companies on August 6, 2008. The Huludao Companies submitted their response to the questionnaire on the new subsidy allegations on August 22, 2008. Northern Steel submitted its response to the questionnaire on the new subsidy allegations on August 25, 2008. The GOC submitted its response on August 29, 2008.

On August 1, 2008, petitioners alleged that the Huludao Companies are uncreditworthy and requested that the Department initiate an uncreditworthy inquiry as described under 19 CFR 351.505(a)(4)(i). Due to the timing of petitioners' submission, we are unable to address their uncreditworthy allegation in the context of this preliminary determination. Therefore, we will address the allegation after the issuance of the preliminary determination.

Scope of the Investigation

The merchandise covered by this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (line pipe), not more that 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term ''carbon quality'' includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

(i)2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Line pipe is normally produced to specifications published by the American Petroleum Institute (API) (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non–graded material. Nevertheless, all pipes meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple–stenciled pipe with an API line pipe stencil is covered by the scope of this investigation.

Excluded from this scope are pipes that are multiple–stenciled to a standard and/or structural specification and to any other specification, such as the API–5L specification, when it also has one or more of the following

[1] Petitioners are United States Steel Corporation, Maverick Tube Corporation, Tex-Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers InternationalUnion, AFL-CIO-CLC.

[2] A public version of this and all public Departmental memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

[3] A public version of this memorandum is available in the CRU.

characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term ''painted'' does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The line pipe products that are the subject of this investigation are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In the *Initiation Notice*, we acknowledged that the scope of the antidumping (AD) and CVD investigations of line pipe may include certain merchandise potentially subject to the AD and CVD investigations on circular welded carbon quality steel pipe (CWP) from the PRC.[4] *See Initiation Notice*, 73 FR 23184. In accordance with the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On May 13, 2008, Wheatland Tube Company (Wheatland), an interested party in this proceeding, submitted comments on the scope of the AD and CVD investigations on line pipe. Wheatland requested that the Department modify the line pipe scope to reflect the scope definition ultimately set out in the CWP investigations.[5] Based on the comments received and resolution of the CWP scope issue, we have modified the scope of the line pipe investigations to eliminate the overlap that existed between the scope of CWP and line pipe. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director, Office 4 Operations, regarding ''Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Scope Modification'' (August 29, 2008).

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On June 3, 2008, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of the subject merchandise. *See Certain Circular Welded Carbon Quality Steel Line Pipe from China and Korea*, Investigation Nos. 701–TA–455 and 731–TA–1149–1150 (Preliminary), 73 FR 31712 (June 3, 2008).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2007, through December 31, 2007, which corresponds to the PRC's most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS Final*), and accompanying decision memorandum (CFS Decision Memorandum). In *CFS Final*, the Department found that

> . . . given the substantial differences between the Soviet–style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet–style economies does not act as a bar to proceeding with a CVD investigation involving products from the PRC.

See CFS Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP Final*), and accompanying decision memorandum (CWP Decision Memorandum).

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* CWP Decision Memorandum at Comment 2.

Subsidies Valuation Information

The Department is investigating loans received by respondents from Chinese banks, including state–owned commercial banks (SOCBs), which are alleged to have been granted on a preferential, non–commercial basis. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(2)(i). However, the Department does not treat loans from government banks as commercial if they were provided pursuant to a government program. *See* 19 CFR 351.505(a)(2)(ii). As explained below, we have preliminarily determined that short–term and long–term loans of the Huludao Companies were received under the GOC's preferential lending program or constitute export–contingent loans and, thus, constitute loans received under an export subsidy program. Similarly, as explained below, we have preliminary determined that Northern Steel's short–term loans were issued contingent on export performance and, thus, constitute loans received under an export subsidy program. Therefore, because we have preliminarily determined that respondents' outstanding loans were issued pursuant to GOC programs, the loans are the very loans for which we require a suitable benchmark.

Under 19 CFR 351.505(a)(3)(ii), if the respondent firm did not have any comparable commercial loans during the period, the Department may use a national interest rate for comparable commercial loans. However, we

[4] *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008), *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008).

[5] *See* Wheatland's submission to the Department entitled ''Scope of the Antidumping Duty investigations of Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China and Countervailing Duty Investigation of Circular Welded Carbon Quality Steel line Pipe from the People's Republic of China - Comments on Scope of Investigations'' (May 13, 2008).

preliminarily determine that the Chinese national interest rates are not reliable as benchmarks for these loans because of the pervasiveness of the GOC's intervention in the banking sector. Loans provided by Chinese banks reflect significant government intervention and do not reflect the rates that would be found in a functioning market. *See* CFS Decision Memorandum at Comment 10.

In our analysis of the PRC as a non–market economy in the AD investigation of certain lined paper products from the PRC, the Department found that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the sector. *See* ''The People's Republic of China (PRC) Status as a Non–Market Economy,'' (May 15, 2006) (May 15 Memorandum); and ''China's Status as a Non–Market Economy,'' (August 30, 2006) (August 30 Memorandum), both of which are referenced in the *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006). This finding was further elaborated in CFS Final. *See* CFS Decision Memorandum at Comment 10. In that case, the Department found that the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis. *See also Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR, 71365 (December 17, 2007) (*Tires Prelim*) and upheld in *Certain New Pneumatic Off–the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires Final*) and accompanying decision memorandum (Tires Decision Memorandum) at ''Subsidies Valuation'' section. We continue to find that these distortions are present in the PRC banking sector and, therefore, preliminarily determine that the interest rates of the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this proceeding.

Moreover, while foreign–owned banks do operate in the PRC, they are subject to the same restrictions as the SOCBs. Further, their share of assets and lending is negligible compared with the SOCBs. Therefore, as discussed in greater detail in *CFS Final*, because of the marketdistorting effects of the GOC in the PRC banking sector, foreign bank lending does not provide a suitable benchmark. *See* CFS Decision Memorandum at Comment 10.

The statute directs that the benefit is normally measured by comparison to a ''loan that the recipient could actually obtain on the market.'' *See* Section 771(5)(E)(ii) of the Act. Thus, the benchmark should be a market–based benchmark, yet, we preliminarily determine that there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market–based benchmark interest rate based on the inflation–adjusted interest rates of countries with similar per capita Gross National Income (GNI) to the PRC, using the same regression–based methodology that we employed in recent CVD proceedings involving the PRC. *See e.g.*, CFS Decision Memorandum at Comment 10 and Tires Decision Memorandum at Comment E.3 ''Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark.''

We note that the use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber First Review*, the Department used U.S. timber prices to measure the benefit for government–provided timber in Canada. *See Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company–Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004) (*Softwood Lumber First Review*) and accompanying decision memorandum at ''U.S. Log Prices are a More Appropriate Benchmark'' section. In the current proceeding, the Department preliminarily finds that the GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. Therefore, as in *Softwood Lumber First Review*, where domestic prices are not reliable, we have resorted to prices outside the PRC.

We now turn to the issue of choosing an external benchmark. Selecting an appropriate external interest rate benchmark is particularly important in this case because, unlike prices for certain commodities and traded goods, lending rates vary significantly across the world. Nevertheless, as discussed in *CFS Final*, there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita GNI tend to have higher interest rates than countries with higher per capita GNI, a fact demonstrated by the lending rates across countries reported in International Financial Statistics (IFS). *See Tires Prelim* at ''Subsidies Valuation'' (upheld in *Tires Final*). The Department has therefore preliminarily determined that it is appropriate to compute a benchmark interest rate based on the inflationadjusted interest rates of countries with similar per capita GNI to the PRC, using the same regression–based methodology that we employed in *CFS Final* and *Tires Final*. As explained in the CFS Decision Memorandum at Comment 10, this pool of countries captures the broad inverse relationship between income and interest rates. We determined which countries are similar to the PRC in terms of per capita GNI based on the World Bank's classification of countries as: low income; lower–middle income; upper–middle income; and high income. The PRC falls in the lower–middle income category, a group that includes 55 countries as of July 2007, *i.e.*, during the POI. *See Tires Prelim* at ''Subsidies Valuation'' (upheld in *Tires Final*).

Many of these countries reported short–term lending and inflation rates to IFS. With the exceptions noted below, we used this data set to develop an inflation–adjusted market benchmark lending rate for short–term renminbi (RMB) loans. We did not include those economies that the Department considered to be non–market economies for AD purposes. The benchmark necessarily also excludes any economy that did not report lending and inflation rates to IFS.

Because these are inflation–adjusted benchmarks, it is also necessary to adjust the interest paid by respondents on its RMB loans for inflation. This was done using the PRC inflation figure as reported to IFS. The Department then compared its benchmarks with respondents' inflation–adjusted interest rate to determine whether a benefit existed for the loans received by respondents on which principal was outstanding or interest was paid during the POI. The lending rates reported in IFS represent short–term lending, and there is not sufficient publicly available long–term interest rate data upon which to base a robust benchmark for longterm loans. Therefore, the Department has derived long–term benchmark rates for a given year using a formula that is a function of the Department's derived short–term benchmark interest rate for the year in question, the inflation rate for the year in question, long–term U.S. corporate BBrated bond rates, and one–year U.S. corporate BB–rated bond rates. To calculate long–term loan

benchmarks, the Department first developed a ratio of short–term and long–term lending. The Department then applied this ratio to the benchmark short–term lending figure (discussed above) to impute a long–term lending rate. Specifically, the Department computed a ratio of long–term U.S. corporate BB–rated bond rates and one–year U.S. corporate BB–rated bond rates reported by the Federal Reserve for 2005. This ratio serves to reflect the mark–up that typically exists on long–term loans, as compared to short–term loans. In calculating long–term benchmarks and discount rates, the Department has adjusted the long–term U.S. corporate BB–rated bond rates to approximate as closely as possible the terms of the long–term loans at issue. Thus, to calculate the long–term loan benchmarks, we adjusted the short–term benchmark lending rate for the year in question to reflect inflation in the PRC and then applied the appropriate mark–up ratio. In our derivation of long–term benchmark interest rates, we have not made any inflation adjustment to interest paid by respondents on their long–term RMB–denominated loans. This methodology is consistent with the Department's practice. *See* Tires Decision Memorandum at ''Loan Benchmarks and Discount Rates'' section and at Comment E.3 ''Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark.''

In addition, the Department requires a U.S. dollar denominated short–term interest rate. Consistent with past practice, for U.S. dollar denominated loans, the Department used as the benchmark the one–year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one–year corporate bond rates for companies with a BB rating, as provided by Bloomberg. *See Tires Prelim*, 72 FR 71365 (upheld in *Tires Final*). For this preliminary determination, we have determined that BB–rated bonds, which are the highest non–investment-grade and near the middle of the overall range, are the most appropriate basis for calculating the spread over LIBOR. Furthermore, consistent with past practice, the Department relied on corporate bond rates for the industrial sector in the United States and the Eurozone, because the market for dollars and euros is international in scope. *Id.*

The Department also requires an RMB–denominated long–term interest rate to use as a discount rate for purposes of allocating benefits received through the provision of certain landuse rights for less than adequate remuneration (LTAR) over the relevant length of each land–use agreement. The Department also requires an RMB–denominated interest rate to use as a discount rate for certain countervailable long–term loans. In calculating the appropriate long–term markup for the provision of land–use rights for LTAR, we have used the 30–year Bloomberg U.S. corporate BB–rated bond rate because this time period most closely matches the 50–year terms of the leases at issue in this investigation. We used the same approach when deriving our long–term interest rate except that in calculating the long–term mark–up, we used the Bloomberg U.S. corporate BB–rated bond rate that corresponded to the duration of the countervailable loan. Our approach regarding the derivation of discount rates is consistent with the Department's practice. *See* Tires Decision Memorandum at ''Loan Benchmarks and Discount Rates'' section.

Allocation Period

Under 19 CFR 351.524(b), non–recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable.

Further, for non–recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Company History

Northern Steel is a foreign invested enterprise that produces electronic resistance welded pipes for the petroleum and natural gas industry, including line pipe, casing pipe and tubing. The company is located at the Economic Development Zone in Haicheng, Liaoning. Northern Steel reports that it was formed on November 7, 2005, and that in 2006, it purchased the assets of a defunct Chinese pipe company. Northern Steel also reports that the sale of the assets took place in an open auction held by a government–owned asset management company. We are seeking additional information on this purchase.

As stated above, the Huludao Companies consist of the Huludao Seven Star Group, Huludao Steel Pipe, and Huludao Bohai Oil Pipe. According to its response, the Huludao Star Group was established in June 1999. It is headquartered in the Longgang District of Huludao City in Liaoning Province. The Huludao Seven Star Group is a domestically owned enterprise that produces standard welded pipes. The Huludao Seven Star Group states that it does not produce subject merchandise. The Huludao Seven Star Group is owned by a group of individual shareholders.

The manufacturing facilities and headquarters of Huludao Steel Pipe are also located in the Longgang District of Huludao City in Liaoning Province. According to its response, Huludao Steel Pipe was established in 1993. During the POI, the shareholders of the Huludao Seven Star Group along with the Huludao Seven Star Group itself owned a majority share of Huludao Steel Pipe. Huludao Steel Pipe is a domestically–owned enterprise that produces standard welded pipe, line pipe (a.k.a., subject merchandise), casing, and rectangular pipe.

The manufacturing facilities and headquarters of Huludao Bohai Oil Pipe are located in the Beigang Industrial Zone and Huludao Development Zone of Huludao City in Liaoning Province. According to its response, Huludao Bohai Oil Pipe was established in 2006. During the POI, Huludao Bohai Oil Pipe was wholly owned by Huludao Steel Pipe. Huludao Bohai Oil Pipe is a domestically owned enterprise that produces hot–rolled steel strips, welded standard pipe, and line pipe.

Cross–Ownership

Under 19 CFR 351.525(b)(6)(vi) cross–ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. Based on the information supplied by the Huludao Companies indicating that common ownership exists between the three companies, we preliminarily determine that the Huludao Seven Star Group, Huludao

Steel Pipe, and Huludao Bohai Oil Pipe are cross–owned under 351.525(b)(6)(vi).

As discussed in further detail below, the Huludao Seven Star Group acquired two parcels of land from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province in 2004 and 2006. The 2004 purchase was on behalf of Huludao Steel Pipe. The 2006 purchase was on behalf of Huludao Bohai Oil Pipe. Under 19 CFR 351.525(b)(6)(v), if a corporation producing non–subject merchandise received a subsidy and transferred the subsidy to a corporation with cross–ownership, the Department will attribute the subsidy to products sold by the recipient of the transferred subsidy. Thus, we preliminarily determine that the land purchased by the Huludao Seven Star Group on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe constitutes a transfer of subsidies by a corporation producing non–subject merchandise to cross–owned corporations that produce subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed such subsidies received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the Provision of Land For LTAR program to the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe (net of their respective sales to affiliates).

We preliminarily determine that the Huludao Seven Star Group did not transfer any other subsidies to Huludao Steel Pipe and Huludao Bohai Oil Pipe during the POI. Therefore, given this preliminary finding and based on the statements of the Huludao Seven Star Group that it does not produce subject merchandise or provide any inputs to Huludao Steel Pipe and Huludao Bohai Oil Pipe that are primarily dedicated to the production of line pipe, we are not including any other programs used by the Huludao Seven Star Group in our subsidy analysis.

Adverse Facts Available

The GOC

As discussed below, the Department is investigating whether GOC authorities provided hot–rolled steel (HRS), a major input in the production of line pipe to respondents for LTAR. In our May 19, 2008 initial questionnaire, we asked the GOC to provide information pertaining to the Department's *de facto* specificity analysis. Specifically, we asked the GOC to:

> Please provide a list by industry and by region of the number of companies which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years.

Concerning the GOC's alleged provision of HRS for LTAR, the GOC stated that:

> No such list exists, nor does any data exist from which to derive such a list absent inquiring with every hot–rolled steel producer in China. Such records would only reflect amounts sold and prices charged, as opposed to any ''benefit'' conferred by the transaction.

See GOC's July 10, 2008 questionnaire response at 110.

On August 5, 2008, the Department issued a supplemental questionnaire to the GOC in which it requested that the GOC respond to Department's *de facto* specificity questions to the best of the GOC's ability. In its response the GOC stated that its initial response reflected its best effort. It added that:

> The sale of hot–rolled steel in the Chinese market neither constitutes a ''program'' nor does it confer any ''benefit'' within the meaning of the U.S. CVD Law or the WTO SCM Agreement. The GOC reiterates that the data sought by the Department simply do not exist, nor would it be feasible to even assemble given the multitude of companies that produce and consume hot–rolled steel in the Chinese market.

As discussed below, the Department is also investigating whether the GOC sold land for LTAR. In its May 19, 2008 initial questionnaire the Department requested that the GOC respond to the Standard Questions and Provision of Goods/Services Appendices as they pertained to the GOC's alleged provision of land for LTAR. In its July 10, 2008 response, the GOC stated:

> Based on the information presently available to the GOC, it does not consider that land use rights provided to the producer respondents and their reporting cross–owned affiliates was provided at ''no cost or nominal cost.'' For this reason, the GOC does not respond to the Standard Questions of Appendix 1 or the Provision of Goods/Services questions at Appendix 5.

See GOC's July 10, 2008 questionnaire response at 101.

In its August 5, 2008 questionnaire, the Department requested that the GOC respond to the information requested in the Standard Questions and Provision of Goods/Services appendices. In its August 21, 2008 supplemental questionnaire response, the GOC responded to sections of the appendices. However, the GOC did not provide the requested information pertaining to the Department's *de facto* specificity analysis. For example, in its August 5, 2008 supplemental questionnaire, the Department asked the GOC to provide the following as it pertained to the GOC's alleged provision of land for LTAR:

> Please provide a list by industry and by region of the number of companies which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years.

In its August 21, 2008 response, the GOC stated that:

> No such list exists regarding the receipt of ''benefits'' through the administration of land use rights. At page 6 of Exhibit 54 of the GOC's initial questionnaire response, data is reported on land use rights – including allocated, granted, and secondary market transfers – that moved over the 2000 – 2005 period. Additional data are publically available and will be provided if requested.

See GOC's August 21, 2008 supplemental questionnaire response at 69.

We note that the data provided in Exhibit 54 of the GOC's initial questionnaire response does not provide the information the Department requested for purposes of its *de facto* specificity analysis.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, 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 of the Act; (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.

Because the GOC failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the GOC provided HRS and/or land to producers of line pipe in a manner that was *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, the Department must base its determination on the facts otherwise available in accordance with sections 776(a)(2)(A) and (B) of the Act.

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 adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, we determine that, in accordance with sections 776(a)(2)(A) and (B) and 776(b) of the Act, the use of AFA is appropriate for the preliminary determination with respect to the GOC's alleged provision of HRS and land to producers of line pipe for LTAR.

As noted, regarding the GOC's alleged provision of HRS and land for LTAR, the GOC did not provide the information the Department requested relating to its *de facto* specificity analysis. The Department issued supplemental questionnaires in which it instructed the GOC to provide the information relating to the Department's *de facto* specificity analysis. However, in its response, the GOC continued to provide insufficient information regarding the Department's questions pertaining to *de facto* specificity. Therefore, consistent with sections 776(a)(2)(A) and (B) of the Act, we find that the GOC did not act to the best of its ability and, therefore, we are employing adverse inferences in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that the provision of HRS and land to producers of line pipe by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.[6] Thus, we preliminarily determine that the provision of HRS and land by GOC authorities to producers of line pipe is countervailable to the extent that the provision of the goods constituted a financial contribution in accordance with 771(5)(D)(iii) of the Act and conferred a benefit upon producers of line pipe within the meaning of 771(E)(iv) of the Act. The Department's decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. *See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon–Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively).

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. The ''Two Free, Three Half'' Program

The ''Foreign Invested Enterprise and Foreign Enterprise Income Tax Law'' (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for foreign invested enterprises (FIEs) in the PRC. The intent of this law is to attract foreign businesses to the PRC.

According to Article 8 of the FIE Tax Law, FIEs that are ''productive'' and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed ''productive'' if they qualify under Article 72 of the ''Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises.'' This provision specifies a list of industries in which FIEs must operate in order to qualify for benefits under this program. The activities listed in the law are: (1) machine manufacturing and electronics industries; (2) energy resource industries (not including exploitation of oil and natural gas); (3) metallurgical, chemical and building material industries; (4) light industries, and textiles and packaging industries; (5) medical equipment and pharmaceutical industries; (6) agriculture, forestry, animal husbandry, fisheries and water conservation; (7) construction industries; (8) communications and transportation industries (not including passenger transport); (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and (10) other industries as specified by the tax authorities under the State Council. If an FIE meets the above conditions, eligibility is automatic and the amount exempted appears on the enterprise's tax return.

Northern Steel reported that it is a ''productive'' FIE and filed a tax return for a ''free'' tax year under this program during the POI.

Consistent with *CFS Final*, we preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. *See* CFS Decision Memorandum at ''Two Free/Three Half'' Program. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the income tax exemption enjoyed by Northern Steel as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and attributed the tax

[6] We note that it is not necessary to rely on this AFA finding in instances in which respondents' land purchases are found to be *de jure* specific.

savings received to the company's total sales. On this basis, we preliminarily determine that Northern Steel received a net countervailable subsidy of 4.18 percent ad valorem under this program.

B. Provision of Land for Less Than Adequate Remuneration

The Department is investigating whether Chinese government authorities provided land use–rights to the respondents for LTAR. Northern Steel is located in the Economic Development Zone in Haicheng. The Economic Development Zone was established by the Anshan Municipal Government in 1992, and upgraded to a province–level development zone in 2002. In September 2006, Northern Steel purchased long–term land–use rights for land in the coastal economic zone from the Haicheng State–owned Land and Resources Bureau, which is a government agency. The Haicheng State–owned Land and Resources Bureau controls the granting and approval of land–use rights and sets the price for industrial land within the Economic Development Zone.

Regarding the Huludao Companies, the Huludao Seven Star Group reported making several land purchases. However, as discussed in the ''Cross–Ownership'' section, we are limiting our subsidy analysis to those land purchases that we preliminarily determine constitute a transfer of subsidies by the Huludao Seven Star Group, a corporation producing non–subject merchandise, to Huludao Steel Pipe and Huludao Bohai Oil Pipe, cross–owned corporations that produce subject merchandise, as described under 19 CFR 351.525(b)(6)(v). Therefore, for purposes of the preliminary determination, we limited our subsidy analysis to the two parcels of land the Huludao Seven Star Group purchased from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province in 2004 and 2006 on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe. Regarding the 2004 purchase, the Huludao Seven Star Group acquired land–use rights from the local government for land that Huludao Steel Pipe had been using since 1993. Regarding the 2006 purchase, the Huludao Seven Star Group acquired land use rights from the local government and subsequently leased the land to Huludao Bohai Oil Pipe. This parcel of land was located in the Beigang Industrial Zone. In addition, in 2004, Huludao Steel Pipe acquired land–use rights from the local government.[7]

For the reasons described below, the Department preliminarily determines that the provision of land–use rights to Northern Steel and the Huludao Companies constitutes a countervailable subsidy in the form of land–use rights provided for LTAR. Northern Steel received its land–use rights from the Haicheng State–owned Land and Resources Bureau, a government authority. According to the respondents, local governments set the prices and were the party to the land–use rights agreements. Thus, the sale of the land–use rights constitutes a financial contribution from a government authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. In addition, in the case of Northern Steel and with regard to the land that the Huludao Seven Star Group purchased in 2006, the Department preliminarily determines that the sales of the land–use rights are specific because they are limited to enterprises or an industry located within a designated geographical region pursuant to section 771(5A)(D)(iv) of the Act. As discussed above, Northern Steel and the land purchased in 2006 by the Huludao Seven Star Group are located within an economic development zone that is within the jurisdiction of the authorities that provided to the company its land–use rights and set the terms of those rights.[8] Regarding the Huludao Companies' 2004 land purchases, as discussed above in the ''Adverse Facts Available'' section, the GOC did not provide the information the Department requested relating to its *de facto* specificity analysis. Therefore, in accordance with section 776(b) of the Act, as AFA, we preliminarily determine that the provision of land to the Huludao Companies in 2004 by the Bureau of Land Resources of Longgang District is *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act.

We further preliminarily determine that the sale of land–use rights provides a benefit pursuant to 19 CFR 351.511(a). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for LTAR. Section 771(5)(E) of the Act further states that the

> . . . adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute.

Consistent with the *Sacks Final* and *Tires Final*, we preliminarily determine that a first tier benchmark cannot be applied. *See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks Final*), and accompanying decision memorandum (Sacks Decision Memorandum) at ''Government Provision of Land for Less Than Adequate Remuneration'' and Comment 10 ''Whether the Department Should Select Either a First–Tier or Third–Tier Benchmark for the Provision of Land–Use Rights for Less Than Adequate Remuneration;'' *see also Tires Final* and Tires Decision Memorandum at Comment H.7 ''Land Benchmark.''

As an initial matter, we note that private land ownership is prohibited in the PRC and that all land is owned by some level of government, the distinction being between land owned by the local government or ''collective''

[7] In its August 18, 2008 supplemental questionnaire response, the Huludao Steel Pipe indicates that the Seven Star Group made an additional land purchase in 2006. However, at this time, information on the record does not indicate that the land was purchased on behalf of Huludao Steel Pipe or Huludao Bohai Oil Pipe. Therefore, we have not conducted a benefit analysis with respect to this transaction. In addition, information from the August 18, 2008 supplemental questionnaire response indicates that an additional affiliate of the Huludao Companies (whose identity is business proprietary) acquired land in 2004. However, information in the questionnaire responses of the Huludao Companies indicates that the affiliate does not produce subject merchandise or provide any member of the Huludao Companies with inputs that are primarily dedicated to the production of subject merchandise. Therefore, we have not performed a benefit analysis regarding this affiliate's 2004 land purchase.

[8] The land Northern Steel purchased is within the authority of Haicheng City of Liaoning Province. The land that the Huludao Seven Star Group purchased in 2006 is located in the Beigang Industrial Zone that is under the authority of the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province.

at the township or village level and land owned by the national government (also referred to as state–owned or ''owned by the whole people'').[9] Noting that the GOC, either at the national or local level, is the ultimate owner of all land in the PRC, the Department has examined whether the GOC exercises control over the supply side of the land market in the PRC as a whole so as to distort prices in the primary and secondary markets.

Consistent with the Department's determinations in *Sacks Final* and *Tires Final*, we preliminarily determine that a first tier benchmark is not appropriate to measure the benefit from the sale of land–use rights during the POI because Chinese land prices are distorted by the significant government role in the market. The *Preamble* states that ''where it is reasonable to conclude the actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.'' *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*)).

The second tier benchmark relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. *See* 19 CFR 351.511(a)(2)(ii). In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in–country purchaser. As discussed in the *Preamble* (63 FR at 65377), the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. We preliminarily determine that land–use rights cannot be evaluated using a second tier benchmark because they cannot be simultaneously ''available to an in–country'' purchaser'' while located and sold out–of-country on the world market.

Since we are not able to conduct our analysis using a benchmark identified under the second tier of the regulations, consistent with the hierarchy, we next considered whether the GOC's pricing of land–use rights is consistent with market principles. This approach is also set forth under 19 CFR 351.511(a)(2)(iii) and is explained further in the *Preamble* (63 FR at 65378):

> (W)here the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price–setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination . . . In our experience, these types of analysis may be necessary for such goods or services as electricity, land leases or water, and the circumstances of each may vary widely.

The regulations do not specify how the Department is to conduct such a market principle analysis. By its very nature, this analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case–by-case basis. In the instant case, we preliminarily determine that due to the overwhelming presence of government involvement in the land–use rights market, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the purchase of land–use rights in the PRC is not conducted in accordance with market principles.

Consistent with the Department's decision in *Sacks Final* and *Tires Final*, we preliminarily find that there is a wide divergence between the *de jure* reforms of the market for land–use rights and the *de facto* implementation of such reforms. *See* Memorandum to the File regarding Land Benchmark Memorandum (Land Benchmark Memorandum) (dated September 2, 2008) at Attachment 2 (stating that the PRC's land laws, regulations, and statements, although often vague and contradictory, seem to support the provision of secure land–use rights to farmers and an open, transparent system for transferring commercial land–use rights).[10] In practice, however, farmers' land–use rights are still not secure and fair compensation for farmers is an ongoing, market–distorting issue in PRC. In addition, laws and regulations are routinely violated by individuals and local governments. While the private market for land–use rights has grown, state–owned enterprises (SOEs) received a significant portion of their land–use rights free of charge. Also, commercial land sales are often conducted illegally. In short, property rights remain poorly defined and weakly enforced. *See* Sacks Decision Memorandum at ''Government Provision of Land for Less Than Adequate Remuneration.''

Also, consistent with the Department's determination in *Sacks Final* and *Tires Final*, we preliminarily find that another *de facto* problem with land supply in the PRC which causes market distortions is that of local government corruption. Local governments most often transfer land through non–transparent negotiations with investors despite guidance that land should be transferred through a transparent bidding or auction process. This has led to widespread corruption where much of the compensation is retained by the local government officials. *See* Land Benchmark Memorandum at Attachment 4 for article on ''Law to Expose Illegal Land Deal,'' *China Daily* (dated August 1, 2006).

Given this preliminarily finding, we have looked for an appropriate basis to determine the extent to which land–use rights are provided for LTAR. We preliminarily find that a comparison of prices for land–use rights in the PRC with comparable market–based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of China, is appropriate. Consistent with *Sacks Final* and *Tires Final*, we preliminarily determine that the most appropriate analysis in this case would be to compare the respondents' purchase of land–use rights to the sales of certain industrial land in industrial estates, parks, and zones in Thailand.

As a general matter, we note that the PRC and Thailand have similar levels of per capita GNI, and that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond the PRC. Therefore, we preliminarily determine that the ''indicative land values'' for land in Thai industrial zones, estates, and parks provided in the Asian industrial Property Reports present a reasonable and comparable benchmark to the land–use rights in the economic zones at issue in this investigation.

Based on the methodology set out in *Sacks Final* and *Tires Final*, we preliminarily determine that the land–use rights acquired by Northern Steel and the Huludao Companies are granted land–use rights and, thus, have employed the benefit calculation methodology described below.

In order to calculate the benefit, we first multiplied the Thai benchmark land rate (deflated from 2007 to the year the transaction was officially approved

[9] *See* GOC's July 9, 2008 questionnaire response at 100.

[10] This public document is on file in the CRU.

by the government) by the total area of the respective parcels purchased by Northern Steel and the Huludao Companies. We then subtracted the price actually paid for these respective tracts by Northern Steel and the Huludao Companies to derive the total unallocated benefit. We next conducted the ''0.5 percent test'' pursuant to 19 CFR 351.524(b)(2) for the years in which the transaction was approved by dividing the total unallocated benefit by the appropriate sales denominator.[11] As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate. We allocated the total unallocated benefit across the term of the land agreement using the standard allocation formula in 19 CFR 351.524(d) and the discount rates discussed above in the ''Subsidies Valuation Information'' section under ''Loan Benchmarks and Discount Rates,'' to determine the amount attributable to the POI.

For Northern Steel, we then divided the POI benefit by the total sales of Northern Steel to calculate a net countervailable subsidy of 2.44 percent *ad valorem*. In the case of the Huludao Companies, as discussed in the ''Cross–Ownership'' section, we preliminarily determine that the land purchased by the Huludao Seven Star Group on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe constitutes a transfer of subsidies by a corporation producing non–subject merchandise to cross–owned corporations that produce subject merchandise as described under 19 CFR 351.525(b)(6)(v). Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed such subsidies received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the Provision of Land For Less Than Adequate Remuneration program to the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe (net of their respective sales to affiliates). On this basis, we calculated a net subsidy rate of 0.68 percent *ad valorem* for the Huludao Companies.

C. Provision of Hot–Rolled Steel for Less Than Adequate Remuneration

The Department is investigating whether GOC authorities provided HRS to producers of line pipe for LTAR. As instructed in the Department's questionnaires, the Huludao Companies and Northern Steel identified the suppliers from whom they purchased HRS during the POI. In addition to the supplier names, the Huludao Companies and Northern Steel indicated the date of payment, quantity, unit of measure, and purchase price for the HRS purchased during the POI. Having obtained permission from the Huludao Companies and Northern Steel to disclose the proprietary names of their respective suppliers to the GOC, we asked the GOC to provide certain information regarding the respondents' domestic suppliers of hot–rolled steel (HRS) (*e.g.*, percentage of government ownership). *See* for Northern Steel, Memorandum to the File from Kristen Johnson, Trade Analyst, Office 3, Operations, ''Consent to Release Company–Specific Proprietary Information to the Government of China'' (July 18, 2008), a public document on file in the CRU; *See* for the Huludao Companies, Memorandum to the File from John Conniff, Trade Analyst, Office 3, Operations, ''Consent to Release Company–Specific Proprietary Information to the Government of China'' (August 1, 2008), a public document on file in the CRU.

In order to assess whether an entity should be considered to be the government for the purposes of a CVD investigation, the Department has in previous cases considered the following factors to be relevant: 1) the government's ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute. However, the Department has found that conducting such a test is not necessary absent information that calls into question whether government ownership does not mean government control. *See* Tires Decision Memorandum at 10. Further, not all of these criteria must be satisfied for an entity to be considered a government entity, but taken together, these five criteria can inform our decision. *See e.g.*, *Coated Free Sheet Paper from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS from Korea*), and accompanying decision memorandum (CFS from Korea Decision Memorandum) at Comment 11. In addition, we instructed the GOC to indicate whether the domestic suppliers of HRS to the Huludao Companies and Northern Steel were trading companies, and if so, to provide information related to the five factors listed above as it pertains to the entities from whom the trading companies purchased the HRS.

Based on our review of the information submitted by the GOC, we preliminarily determine that certain domestic suppliers of HRS were majority–owned by the GOC during the POI and, therefore, constitute government authorities.

In addition, in its response the GOC identified which domestic HRS suppliers of the Huludao Companies were trading companies.[12] Regarding these domestic trading companies, the GOC was unable to provide the requested information concerning the entities from which the trading companies acquired the input, even in instances involving government–owned trading companies. Further, the GOC was unable to provide the requested information concerning the ''Five Factor Test'' as it pertains to the suppliers from whom the domestic trading companies purchased the HRS. Thus, we preliminarily determine that the necessary information is not on the record, and we are resorting to the use of facts available (FA) within the meaning of sections 776(a)(1) and (2) of the Act.

In its initial questionnaire response, the GOC provided information on the amount of HRS produced by SOEs, collectives, and private producers in the PRC. *See* GOC's July 9, 2008 questionnaire response at page 102. Using these data, we derived the ratio of HRS produced by government entities (SOEs and collectives) during the POI (60.77 percent). Thus, pursuant to sections 776(a)(1) and (2) of the Act, for purposes of this preliminary determination we are resorting to the use of FA with regard to the HRS sold to the Huludao Companies by domestic trading companies. Specifically, we are assuming that the percentage produced by government authorities is equal to the ratio of HRS produced by SOEs and collectives during the POI.[13] This approach is consistent with the Department's practice. *See* CWP Decision Memorandum at ''Hot–rolled Steel for Less Than Adequate Remuneration;'' *see also Light–Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWP Final*), and accompanying decision memorandum (LWP Decision Memorandum) at ''Hot–rolled Steel for Less Than Adequate Remuneration.'' For further discussion, see our description of the benefit

[11] Where the approval date and approved amount of the unallocated benefit was not available, we used the date in which the transaction was conducted for purposes of the 0.5 percent test.

[12] Northern Steel reported that it did not purchase HRS from trading companies during the POI. See Northern Steel's August 14, 2008 questionnaire response at 2.

[13] In other words, as FA, we are assuming that 60.77 of the HRS purchased by domestic trading companies during the POI was produced by SOEs.

calculations below. For purposes of the final determination, the Department will seek additional information regarding the amount of HRS purchased by domestic trading companies that was produced by SOEs and collectives.

Having identified the extent to which the Huludao Companies and Northern Steel obtained HRS from GOC authorities, we preliminarily determine that the GOC authorities' provision of HRS constitutes a financial contribution under section 771(5)(D)(iii) of the Act.[14] Furthermore, as discussed above in the ''Adverse Facts Available'' section, pursuant to section 776(b) of the Act, we find that the provision of HRS to producers of line pipe by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market–determined benchmarks for measuring the adequacy of remuneration for government–provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[15] because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[16]

As explained above, for purposes of this preliminary determination, we find that SOEs and collectives account for approximately 60.77 percent of the HRS production in the PRC during the POI. Consequently, because of the government's overwhelming involvement in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[17] As we explained in *Softwood Lumber Investigation*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[18]

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market–determined prices to measure the adequacy of remuneration.

The GOC also placed on the record aggregate import price data for HRS from various countries for the POI. Information from the GOC indicates that imports of HRS accounted for 0.63 percent of the volume HRS available in the Chinese market during the POI. Because the volume of imports of HRS into the PRC is small relative to Chinese domestic production of HRS, we are not using the aggregate import price data in our benchmark calculations. We note that this approach is similar to the Department's approach in *LWP Final*, in which the Department declined to use aggregate import price data supplied by the GOC for benchmark purposes because of the small size of the import quantities relative to Chinese domestic production. *See* LWP Decision Memorandum at Comment 7.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. We note that petitioners provided data from the Steel Benchmarker Report which contains monthly ''world'' prices for hot–rolled band. *See* Exhibit 4–A of petitioners' April 21, 2008 amendment to the April 3, 2008, petition. We preliminarily determine that data in the Steel Benchmarker Report may serve as a world market benchmark price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from the Steel Benchmarker Report in recent CVD proceedings involving the PRC. *See CWP Final* and *LWP Final*.

The prices for HRS in the Steel Benchmarker Report are expressed in U.S. dollars (USD) per metric ton (MT). Therefore, to calculate the benefit, we first converted the benchmark prices from U.S. dollars to renminbi (RMB) using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Therefore, when deriving the benchmark prices, we adjusted the data from the Steel Benchmarker Report to include the value added tax (VAT) and import duties that would have been levied on imports of HRS during the POI. The GOC provided the applicable tax rates in its questionnaire response. Regarding delivery charges, we note that the data in the Steel Benchmarker Report do not include a freight cost component. However, because no data regarding freight costs are available on the record, we have not adjusted the benchmark prices of HRS for freight. We invite interested parties to submit comments on whether and, if so, how freight should be included in the derivation of the HRS benchmark price.

We then compared the benchmark unit prices to the unit prices the

[14] For purposes of this preliminary determination, we find that private producers that provided HRS to the respondents during the POI do not constitute government authorities and, thus, their provision of HRS does not constitute a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

[15] *See also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber Investigation*), and accompanying decision memorandum at 36 (Softwood Lumber Investigation Memorandum).

[16] *See Preamble*, 63 FR at 65377.

[17] *See* Softwood Lumber Investigation Memorandum at ''There are no market-based internal Canadian benchmarks'' section.

[18] *See* Canadian Lumber Memorandum at 38-39.

respondents paid to domestic suppliers of HRS during the POI that the Department has preliminarily determined constitute government authorities. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of HRS purchased from the GOC authorities to arrive at the benefit. As explained above, in instances in which the Huludao Companies purchased HRS from government trading companies and/or private trading companies, we multiplied the product of the price difference per unit and the quantity of HRS purchased by 60.77 percent to arrive at the benefit.

To calculate the net subsidy rate, we divided the total benefit by each respondent's total sales during the POI. In the case of the Huludao Companies, the total sales denominator consisted solely of sales by Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we preliminarily calculated a net countervailable subsidy rate of 23.01 percent *ad valorem* for Northern Steel and 17.18 percent *ad valorem* for the Huludao Companies.

D. Foreign Trade Development Fund Program[19]

The GOC reports that Northern Steel and Huludao Steel Pipe received grants during the POI under the ''Provisional Administration Measures on Northeast Old Industrial Base Foreign Trade Development Fund of Liaoning Province'' (No. 559), established on November 18, 2004. The provisional measure states that the Foreign Trade Development Fund supports projects undertaken by exporting enterprises to improve the competitiveness of their exported products, to develop an export processing base, to support the registration of trademarks in foreign countries, to support the training of foreign trade professionals, and to explore international markets.[20]The provisional measure states that monies distributed by the fund are to be used only for the approved project and that the funding proportion of the applied project shall not exceed 50 percent of the total expense of the project.[21] The fund is administered by the Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation and Liaoning Department of Finance. Companies eligible for assistance are export enterprises with legal person status and export performance in Liaoning Province,[22] and are required to submit a separate application to the authorities each time assistance is requested.

We preliminary determine that the export interest subsidies that Huludao Steel Pipe and Northern Steel received from the Liaoning provincial government constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of the export interest subsidies is contingent upon export performance, the program is specific within the meaning of section 771(5A)(A) of the Act.

In the case of Huludao Steel Pipe, it received grants under the program in 2005, 2006, and 2007. The ''0.5 percent expense test'' calculation for Northern Steel and Huludao Steel Pipe, respectively, demonstrate that the amounts of the subsidies were less than 0.5 percent of the relevant export sales denominator. Because the amounts of the subsidies are less than 0.5 percent of the relevant sales, we are expensing the benefit from the grant in the year of receipt. In conducting the ''0.5 percent expense test'' for grants received by Huludao Steel Pipe in 2005 and 2006, we used the exports sales of Huludao Steel Pipe because Huludao Bohai Oil Pipe had no export sales in those years. For grants received by Huludao Steel Pipe in 2007, we used the combined exports sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe.

On this basis, we preliminarily determine that Northern Steel received a net countervailable subsidy of 0.05 percent *ad valorem* under this program and that the Huludao Companies received a net countervailable subsidy of 0.08 percent *ad valorem* under the program.

Huludao Steel Pipe also reported that during the POI it received VAT refunds on its purchases of fixed assets under Foreign Trade Development Fund program. According to the GOC, the VAT program was established on September 14, 2004 by the ''Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas.'' It is administered by the Huludao State Tax Administration. Under the program, VAT tax payers that are members of the equipment manufacturing, petrochemical, metallurgical, ship building, automobile, and agricultural products industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods. The cap for such VAT deductions is the incremental increase in VAT liability from the previous year. According to Article 2 of the ''Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas,'' the VAT exemption is limited to firms located in the northeast region of the PRC. *See* GOC's July 9, 2008 questionnaire response at Exhibit 67. The GOC states that the VAT program is not contingent upon exports.

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone and a benefit in the amount equal to the VAT refunds under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We also preliminarily determine that this program is specific under section 771(5A)(D)(iv) of the Act because the VAT refunds provided under the program are limited to companies located in a certain geographical region. Huludao Bohai Oil Pipe and the Huludao Seven Star group did not use this program.

In accordance with 19 CFR 351.524(c), we find that VAT refunds provided under the program constitute recurring benefits. Therefore, to calculate the benefit, we divided the total amount of VAT refunds Huludao Steel Pipe received under the program by the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we preliminarily determine that the Huludao Companies received a net countervailable subsidy of 0.10 percent *ad valorem*.

E. Export Interest Subsidies

Huludao Steel Pipe and Northern Steel received export interest subsidies from the Liaoning provincial government during the POI. The GOC reports that the export interest subsidies are provided for under the ''Provisional Administrative Measures on High–Tech Products and Equipment Manufacturing Products Export Financial Interest Assistance of Liaoning Province'' (No. 671), established on December 16, 2004. This provisional measure provides assistance to companies to expand the exportation of high–tech products and equipment manufacturing products, and supports the development of enterprises

[19] This program was referred to as the Northeast Revitalization Program in the *Initiation Notice*.

[20] *See* GOC's August 21, 2008 supplemental questionnaire response at Exhibit 22, Chapter III ''Major Directions of Support,'' Article 6.

[21] *Id.* at Chapter VI ''Supervision and Administration,'' Article 11 and 12.

[22] *Id.* at Chapter IV ''Application Criteria,'' Article 7.

located in Liaoning Province.[23] This program is administered by the Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation, Liaoning Department of Finance, and the Economic Commission of Liaoning Province.

The interest assistance provided to exporting enterprises is to be used to pay interest on bank loans.[24] The provisional measure states that the Liaoning Department of Finance determines the interest assistance amount in accordance with the short–term loan benchmark interest rate of commercial banks, the term of the enterprise's short–term loans, and the shortterm loan amounts.[25] Specifically, Article 5 of the provisional measure refers to ''export loans,'' which means ''short–term loans obtained by enterprises that produc{e} high–tech products and equipment manufacturing products in {the} province from banks and non–bank financial institutions due to the shortage of necessary funds for production and operation between products export declaration and receipt of payment.''[26]

The GOC states that to be eligible for interest assistance a legally registered enterprise must have an annual exportation value above $1,000,000, have exported products that fall in the scope of the ''China High–Tech Product Export Catalog'' or the scope of equipment manufacturing products, and have short–term loans provided during the period from the products' export declaration to receipt of payment.[27]

To receive interest assistance, eligible companies must submit a separate application each year assistance is requested accompanied with export contracts, export declaration forms, a description of the exported product, and bank loan contracts.[28] Northern Steel reported that it was eligible for the export interest subsidies because the company's total export sales in 2006 was greater than $15,000,000,[29] the company's loan interest rate was higher than the basic loan interest rate of the People's Bank of China,[30] and the company exported high–technology products.[31] Huludao Steel Pipe reported that it was eligible for export interest subsidies because it belonged to the equipment manufacturing industry and made export sales from Liaoning Province.

We preliminary determine that the export interest subsidies that Huludao Steel Pipe and Northern Steel received from the Liaoning provincial government constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of the export interest subsidies is contingent upon export performance, the program is specific within the meaning of section 771(5A)(A) of the Act.

Because neither Huludao Steel Pipe nor Northern Steel receive export interest subsidies on an on–going basis and must submit a separate application for consideration of the assistance, we are treating the export interest subsidies as a non–recurring grant. In accordance with 19 CFR 351.524(b)(2), we applied the ''0.5 percent expense test.'' The calculation demonstrates that the total amount of export interest subsidies approved during the POI is less than 0.5 percent of Northern Steel's 2007 total export sales. In the case of Huludao Steel Pipe, the calculation demonstrates that the total amount of export interest subsidies approved in 2006, the year of approval/receipt, was less than 0.5 percent. Because the amount of subsidies is less than 0.5 percent of the relevant sales, we are expensing the benefit from the export interest subsidies in the year of receipt rather than allocating the benefits over the AUL period.

On this basis, we preliminarily determine that Northern Steel received a net countervailable subsidy of 0.43 *ad valorem* under this program. Regarding the Huludao Companies, we preliminarily determine that the grant received under the program was fully expensed prior to the POI.

F. Export Loans

In its response to questions regarding this program and submission of its short–term loan data, Northern Steel reported conflicting information on the loans outstanding during the POI. Specifically, Northern Steel reported that none of its outstanding loans were export loans. However, as discussed above in the ''Export Interest Subsidies'' section, to be eligible to receive the export interest subsidies a company must have export loans outstanding, specifically postshipment export financing. Thus, we preliminarily determine that the record lacks the necessary information needed to identify which loans, provided by a government bank, are the export loans against which the export interest subsidy was calculated. As a result, we are resorting to the use of AFA within the meaning of section 776(b) of the Act. Therefore, as AFA, we preliminarily find all of Northern Steel's short–term loans outstanding in the POI, against which the company paid interest, to be export loans. For the Huludao Companies, we have evidence on the record that they had outstanding during the POI two short–term export loans provided by a government bank. Therefore, as AFA, we preliminarily find that these two export loans were used by the Huludao Companies for the receipt of the export interest subsidies. We will continue to seek information from Northern Steel and the Huludao Companies regarding export–contingent loans the companies received from government banks.

Pursuant to section 771(5A)(A) of the Act, we preliminarily determine that the export loans received by the respondents are specific because receipt of the financing is contingent upon exporting. We also preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act. We note that the Department's finding in this regard is consistent with the Department's current practice. *See e.g.*, CFS from Korea Decision Memorandum at ''Export and Import Credit Financing from KEXIM,'' where the Department found that export loans issued by government–owned banks like the Korea Export Import Bank (KEXIM) constituted countervailable export subsidies.

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short–term interest rates discussed above in the ''Subsidies Valuation Information'' section. To calculate the net countervailable subsidy rate, we divided the benefit received by each company's respective export sales value for 2007. On this basis, we preliminarily determine the net countervailable subsidy rate for the Huludao Companies to be 0.02 percent *ad valorem* and for Northern Steel to be 1.54 percent *ad valorem*.

[23] *Id.* at 48 and Exhibit D-25.

[24] *Id.* at Exhibit D-25, Article 20.

[25] *Id.* at Exhibit D-25, Article 18.

[26] *Id.* at Exhibit D-25,Article 5.

[27] *Id.* at 51 and Exhibit D-25, Article 12.

[28] *Id.* at 50-51 and Exhibit D-25, Article 13.

[29] *See* Northern Steel's July 14, 2008 questionnaire response at 11.

[30] *See* Northern Steel's July 14, 2008 questionnaire response at Attachment 8 and August 6, 2008 questionnaire response at 36.

[31] *See* Northern Steel's August 26, 2008 questionnaire response at 5.

G. Liaoning Province Grants - Five Points One Line Program

The Huludao Companies report that Huludao Steel Pipe and Huludao Bohai Oil Pipe received grants in the form of loan interest subsidies in 2006 and 2007 under the Five Points One Line Program. The Huludao Companies also report that Huludao Bohai Oil Pipe received certain fee exemptions during the POI under the program. The program was introduced on January 21, 2006 by the Liaoning Provincial Government pursuant to the ''Opinion of Liaoning Province Encouraging the Expansion of Opening–Up in Coastal Key Developing Areas.'' Interest subsidies provided under the program are administered by the Liaoning Development and Reform Commission and the Liaoning Finance Bureau. Fee exemptions provided under the program are administered by the Huludao Beigang Industrial Park, Industry, and Commerce Authority.

The GOC states that the goal of the Five Points One Line Program is to accelerate the development of the coastal economic belt of Liaoning Province. Eligibility under the program is limited to enterprises located within designated industrial zones and other areas within Liaoning Province, as specified under the program.

We preliminary determine that the grants and fees received by Huludao Steel Pipe and Huludao Bohai Oil Pipeunder the program constitute a financial contribution, in the form of a direct transfer of funds from the government, which bestow a benefit equal to the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of grants under the program are limited to enterprises located in certain geographical regions within the Liaoning Province, the program is specific within the meaning of section 771(5A)(D)(iv) of the Act.

Because Huludao Steel Pipe and Huludao Bohai Oil Pipe did not receive grants on an ongoing basis and must submit a separate application to receive additional assistance under this program, we are treating the assistance received under the program as a non–recurring grant. In accordance with 19 CFR 351.524(b)(2), we applied the ''0.5 percent expense test.'' The calculation demonstrates that the grant amounts received by Huludao Steel Pipe and Huludao Bohai Oil Pipe in 2006 and 2007 are less than 0.5 percent of the total sales denominator.[32] Because the amount of the subsidies is less than 0.5 percent of the relevant sales (total sales), we are expensing the benefit from the grants in 2006 and 2007, the years of receipt, rather than allocating the benefits over the AUL period. On this basis, we preliminarily determine that the grants Huludao Steel Pipe and Huludao Bohai Oil Pipe received in 2006 did not benefit the Huludao Companies during the POI. Regarding the grant amount received by Huludao Steel Pipe in 2007, we preliminarily determine the countervailable net subsidy rate to be 0.30 percent *ad valorem*.

In addition, we preliminarily determine that the fee exemptions that Huludao Bohai Oil Pipe received during the POI constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and a benefit under section 771(5)(E) of the Act in an amount equal to the fee exemption. We further preliminarily determine that the fee exemptions are specific under section 771(5A)(D)(iv) of the Act because they are limited to enterprises located in certain geographical regions. In accordance with 19 CFR 351.524(c), we find that the fee exemptions are recurring subsidies and, thus, have expensed them to the POI. Specifically, we divided the fee exemptions received during the POI by the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we preliminarily determine that the net subsidy rate from the fee exemptions is less than 0.005 percent *ad valorem*.

H. Income Tax Credits on Purchases of Domestically–Produced Equipment by Domestically Owned Companies

Huludao Steel Pipe reported receiving an income tax deduction on the tax return it filed during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999 by the ''Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects.'' The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. The GOC further states that pursuant to the ''Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises,'' the program was terminated effective January 1, 2008.

We preliminarily determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(A) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods.

To calculate the benefit, we summed the amount of tax savings the Huludao Steel Pipe received on the tax return it filed during the POI in accordance with 19 CFR 351.509(a)(2)(b). In accordance with 19 CFR 351.509(c), we have allocated benefits received under the program to the POI.

To calculate the net subsidy rate, we divided the benefit by the combined 2007 sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we calculated a net countervailable subsidy rate of 0.38 percent *ad valorem* for the Huludao Companies.

We will continue to examine whether the purported termination of this program constitutes a program–wide change under 19 CFR 351.526.

I. Preferential Lending of Policy Loans to State–Owned Enterprises and the Steel Industry by State–Owned and Controlled Banks

In *CWP Final*, the Department discussed its findings regarding the GOC's policy lending. *See* CWP Decision Memorandum at Comment 8. The Department described the various industrial plans that the GOC had established in recent years in which policy goals pertaining to the steel industry are discussed. Regarding the National and Economic and Social Development 11th Five–Year Plan (11th Five–Year Plan), the Department found that while the plan lists specific policy goals relating to the steel industry, it did not provide for financing and credit. Therefore, the Department found that the plan did not provide a basis for finding that policy lending exists for the CWP industry. *Id*.

In the *CWP Final*, the Department also examined the ''Interim Provisions on Promoting Industrial Structure Adjustment'' (ISA). *Id*. Regarding this provision, the Department noted that

[32] We note that Huludao Bohai Oil Pipe did not have any sales in 2006. Therefore, in performing the ''0.5 percent expense test,'' we used the 2006 total sales of Huludao Steel Pipe.

Article 17 of the ISA stated that with regard to ''encouraged projects,'' all financial institutions shall provide credit in compliance with credit principals. *Id.* The Department explained that such ''encouraged projects'' covered under the ISA are listed in the ''Directory Catalogue on Readjustment of Industrial Structure'' (Directory Catalogue). *Id.* The Department further explained that though pipe products were listed under the Directory Catalogue, the ISA did not identify any specific financing tools that are provided to ''encouraged industries'' and, thus, the Department determined that no preferential lending was received pursuant to the ISA or the Directory Catalogue. *Id.*

Because the information on the record of the CWP investigation is similar to the information on the record of the instant investigation, we have, for purposes of the preliminary determination, reached the same conclusion as those made by the Department in *CWP Final* as it pertains to the industrial plans discussed above.

In addition, the Department examined the ''Council Circular on Printing Circulating Certain Supporting Policies for Implementation of the Outline of Medium and Long–Term Plan for National Scientific and Technological Development'' (Technology Development Plan). In *CWP Final*, the Department found that the Technology Development Plan explicitly provides for policy lending to high technology enterprises. *Id.* In particular, the Department found that Article 15 of the Technology Development Plan states that the China Development Bank and the Export–Import Bank of China may provide soft loans to high and new technology enterprises for taking part in project investment, and provide financial support to export and import key technologies. *Id.* Also, the Department found that Article 16: (1) instructs commercial banks to lend to high–tech projects ''in accordance with national investment policy and credit policy;'' and (2) further encourages the nominally ''commercial banks'' to ''prioritize'' loans to support the exportation of the products of high technology enterprises.

For purposes of this preliminary determination, we find that there is no information indicating that Northern Steel and the Huludao Companies received any loans outstanding during the POI that were issued pursuant to the Technology Development Plan. We will continue to examine whether respondents received any such loans under this GOC plan.

In *CWP Final*, the Department also examined the ''Development Policies for the Iron and Steel Industry Plan'' (Iron and Steel Policy). *Id.* The Department explained that as an initial matter, it was unable to definitively determine what was meant by the GOC's use of the term ''major iron and steel projects'' as specified under the Iron and Steel Policy. *Id.* In an attempt to define the term, the GOC provided a copy of a page from a 2006 metal products industry publication to demonstrate that the term ''metal products'' relates exclusively to ''steel wire products'' and not steel products writ large. *Id.* However, the Department concluded that the metal industry publication did not provide sufficient proof to demonstrate that pipe products were not covered by the Iron and Steel Policy.

Notwithstanding the lack of definitive evidence that the Iron and Steel Policy was limited to steel wire products, the Department found in *CWP Final* that the policy includes only one reference to using loans to support particular producers or activities. Specifically, in *CWP Final*, the Department noted that Article 16 of the Iron and Steel Policy states:

> For a major iron and steel product that is based on home–made equipment as newly developed, that state shall grant policy supports in such aspects as taxation, discounted interest rates, and scientific research funds.

See CWP Decision Memorandum at Comment 8.

In *CWP Final*, the Department found that none of the respondents received loans for ''home–made'' (*e.g.*, domestically produced equipment) that were outstanding during the POI. Id. Therefore, in *CWP Final*, the Department concluded that producers of CWP did not receive loans during the POI under the Iron and Steel Policy. *Id.*

In the instant investigation, the GOC has made similar claims regarding the scope of the Iron and Steel Policy. In particular, the GOC has placed the same page from the 2006 metal publication discussed above in support of its contention that the scope of the Iron and Steel Policy is limited to steel wire products. *See* Exhibit D–8 of the GOC's August 21, 2008 supplemental questionnaire response. The GOC further claims in the response that the term ''discounted interest rates,'' cited by the Department in *CWP Final* as part of Article 16 of the Iron and Steel Policy, constitutes an inaccurate translation. In the instant investigation, the GOC claims that the phrase involving loans in Article 16 of the Iron and Steel Policy, in fact, refers to the provision of lump sum interest subsidy payments by the GOC and not to the provision of loans with discounted interest rates. On this basis, the GOC claims that the Department cannot rely on Article 16 as the basis for finding that the Iron and Steel Policy provides preferential lending to steel producers, including producers of line pipe.

As in *CWP Final*, we continue to find that the information from the 2006 metal publication does not provide sufficient information to enable to the Department to definitively conclude that line pipe products are not considered ''major iron and steel proudcts'' covered by the Iron and Steel Policy. Regarding the GOC's claims concerning the translation of Article 16 of the policy, we note that the English translation of Article 16 submitted by the GOC continues to make reference to ''discounted loans.'' *See* GOC's August 21, 2008 questionnaire response at Exhibit D–12. Therefore, for purposes of the preliminary determination, we find that line pipe products are covered under the scope of the Iron and Steel Policy.

Given that Article 16 of the Iron and Steel Policy states that the GOC ''*shall* grant policy supports in such aspects as . . . discounted loans,'' we asked Northern Steel and the Huludao Companies to indicate whether any of their loans outstanding during the POI were issued for the purpose of acquiring or paying for domestically produced equipment. In its August 6, 2008 questionnaire response, Northern Steel indicates that none of its loans outstanding during the POI were received for the purpose of acquiring or purchasing domestic equipment. Concerning the Huludao Companies, in their August 28, 2008 questionnaire response, they indicated that none of the loans issued to the Huludao Seven Star Group and Huludao Steel Pipe that were outstanding during the POI were for the purpose of acquiring domestically produced equipment. However, in the case of Huludao Bohai Oil Pipe, information submitted by the Huludao Companies indicates that the nature of all of the loans the company had outstanding during the POI from GOC–owned banks could have involved the acquisition of domestically equipment. *See* the Huludao Companies' August 28, 2008 questionnaire response.[33]

Based on the information supplied by respondents, we preliminarily determine that Northern Steel, the

[33] The exact nature of the loans Huludao Bohai Oil Pipe had outstanding during the POI are business proprietary.

Huludao Seven Star Group, and Huludao Steel Pipe did not have any loans received for the purpose of acquiring domestically produced equipment that were outstanding during the POI. However, based on the information supplied by the Huludao Companies, we preliminarily determine that there is a sufficient basis to determine that Huludao Bohai Oil Pipe had loans outstanding during the POI that would be covered under Article 16 of the Iron and Steel Policy.

Based on the information in Article 16 of the Iron and Steel Policy (*e.g.*, that the ''state *shall* grant policy supports in such aspects as . . . discounted interest rates'' for projects based on domestically produced equipment), we preliminarily determine that the loans Huludao Bohai Oil Pipe received from GOC–owned banks during the POI constitute a financial contribution under section 771(5)(D)(i) of the Act. We further preliminarily determine that the loans in question confer a benefit under section 771(5)(E)(ii) of the Act to the extent that the interest payments made on the government loans during the POI are less than what would have been paid on a comparable commercial loan. In addition, we preliminarily determine that the loans Huludao Bohai Oil Pipe had outstanding during the POI from GOC–owned banks are specific under the statute because financing provided under Article 16 of the Iron and Steel Policy is limited to major iron and steel products, which for purposes of this determination we find includes line pipe.

To calculate the benefit under this program, we compared the amount of interest paid against the loans provided under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short–term and long–term benchmark interest rates discussed above in the ''Subsidies Valuation Information'' section.

To calculate the net countervailable subsidy rate, we divided the benefit received by Huludao Bohai Oil Pipe by the total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate for the Huludao Companies to be 0.15 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Confer Benefits During the POI

A. Additional Grants Received by the Huludao Companies

In the Department's May 19, 2008 initial questionnaire response, the Department instructed respondents to indicate whether the GOC or any other local or provincial government provided them with any other form of assistance. In its July 9, 2008 initial questionnaire response, Huludao Steel Pipe reported that it received no other forms of assistance apart from the assistance indicated in its initial response. However, in response to the Department's request in its July 30, 2008 supplemental questionnaire for Huludao Steel Pipe to break out its capital account, the company indicated that it received three additional grants from certain provincial and municipal institutions.[34] Specifically, Huludao Steel Pipe reported that it received grants in 2005 and 2006. The GOC did not provide any information concerning these three grants in its August 21, 2008 supplemental questionnaire response.

Because the assistance reported by Huludao Steel Pipe was provided in the form of grants, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period. However, Huludao Steel Pipe did not provide any information regarding the amount of subsidies approved or the dates on which the relevant government authority approved the subsidies. Lacking this information, we have performed the ''0.5 percent expense test'' using the amount of grants actually received and their corresponding dates of receipt. Further, because we lack information from the GOC concerning the eligibility requirements of the government programs under which the grants were provided, we are not able to discern the corresponding sales denominator that should be used in the denominator of the ''0.5 percent expense test.'' Therefore, in accordance with section 776(a) of the Act, because the necessary information is not available on the record, we have used the facts otherwise available in conducting the ''0.5 percent expense test.'' Specifically, we have used the smallest available sales denominators for the Huludao Companies for the years in which the grants were received. Specifically, we used the total export sales of Huludao Steel Pipe as the denominator of the ''0.5 percent expense test'' for years 2005 and 2006.[35] The calculation demonstrates that the grant amounts were less than 0.5 percent of their relevant sales denominators. Because the amount of the grants is less than 0.5 percent of the relevant sales, we have expensed the benefits from the grants to the year of receipt. On this basis, we preliminarily determine that, regardless of whether the grants were received under a countervailable subsidy program, any such benefits are not attributable to the POI.

B. No–Payment Loans

In 1996, Huludao Steel Pipe received two loans from government institutions located in Liaoning Province.[36] In its July 9, 2008 initial questionnaire response, Huludao Steel Pipe reported that had not paid any interest on either of the two the loans since their receipt in 1996. In addition, Huludao reported it had not made any principal payments on one of the loans and only sporadic principal payments on the other loan. Huludao Steel Pipe further reported that no loan agreements or contracts were signed between the company and the government institutions at the time of receipt of the loans. Information supplied by Huludao Steel Pipe indicates that there have been no agreements or contracts signed between the company and government since receipt of the loans.

As explained above, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. Because these loans were received prior to the December 11, 2001 ''cut–off'' date, we preliminarily determine that the loans did not confer benefits upon Huludao Steel Pipe during the POI.

III. Programs For Which Additional Information Is Required

Liaoning Province Grant: Liaoning Enterprise Technology Renovation Project Interest Assistance

Huludao Steel Pipe and Huludao Bohai Oil Pipe received grants from the Government of Liaoning Province under the Liaoning Enterprise Technology Renovation Project Interest Assistance program. The grant received by Huludao Steel Pipe was approved in 2005 and disbursed in 2006 and 2007. Huludao Bohai Oil Pipe's grant was approved and received in 2006. The GOC reports that grants under the program are provided for under the ''Liaoning Administrative Measures on Enterprise Technology Renovation Loan Interest

[34] The identity of the government institutions and the details concerning the grant amounts are business proprietary. *See* Huludao's August 18, 2008 supplemental questionnaire response.

[35] Huludao Bohai Oil Pipe did not report any sales in 2005 or 2006.

[36] The names of the government institutions are business proprietary.

Subsidy Fund,'' which was enacted on December 22, 2005. The program is designed to assist in technology upgrades by providing grants to cover interest expenses companies incur in financing technology renovation projects. The program is administered by the Economic Commission and Financial Departments of the Government of Liaoning Province.

According to the GOC, in order to be eligible to receive assistance under the program, firms must be located in Liaoning Province and engage in technology renovation projects that pertain to the production of raw materials and equipment or involve the following industries: chemical, textiles, pharmaceutical, information technology, and agricultural processing industries. The GOC states that this program is not contingent upon export performance.

Huludao Steel Pipe and Huludao Bohai Oil Pipe did not receive grants on an ongoing basis and submitted separate applications for consideration of the assistance they received, thus we are treating the assistance received under the Liaoning Enterprise Technology Renovation Project Interest Assistance program as non–recurring grants.

We preliminarily determine that grants provided under the program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit, in an amount equal to the grants received, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, at this time, we lack sufficient information to determine whether this program is specific under section 771(5A)(A) of the Act.

However, for purposes of the preliminarily determination, we find that regardless of whether the program is found to be countervailable, the grants received to Huludao Steel Pipe and Huludao Bohai Oil Pipe in 2006 are not attributable to the POI due to the fact that the approval amounts of the grants were less than 0.5 percent of their relevant sales denominator in the year of approval.[37] Therefore, in accordance with 19 CFR 351.525(b)(2), we have expensed the grants provided under the program to their respective years of receipt rather than allocating the benefits over the AUL period. As a result, we preliminarily determine that the grants received by Huludao Steel Pipe and Huludao Bohai Oil Pipe in 2006 were fully expensed prior to the POI.

Regarding the grant amounts disbursed to Huludao Steel Pipe, as explained above, we lack sufficient specificity information for this program at this time. Therefore, we will seek additional specificity information regarding this program in order to allow the Department to make a subsidy determination with respect to grant amounts disbursed to Huludao Steel Pipe during the POI.

IV. Programs Preliminarily Determined To Be Not Countervailable

A. Provision of Electricity for Less Than Adequate Remuneration

According to the GOC, electricity in the PRC is produced by numerous power plants and is transmitted for local distribution to virtually all end users by two state–owned transmission companies, the State Grid and China South Power Grid. The State Grid is responsible for transmitting electricity to Liaoning Province. Generally, prices for uploading electricity to the power grid and transmitting it are regulated by the GOC, as are the final sales prices. The following measures set forth the basic rules for determining electricity prices: ''Circular on Implementation Measures Regarding Reform of Electricity Prices'' (FAGAIJIAGE {2005} No. 514, National Development and Reform Commission), ''Provisional Administrative Measures on Prices for Transmission of Electricity,'' and ''Provisional Administrative Measures on Prices for Sales of Electricity'' (which states at Article 29 ''Government departments in charge of pricing at various levels shall be responsible for the administration and supervision of electricity sales prices.'').[38] The GOC reports that all areas of Liaoning Province are subject to the same electricity price schedule.[39]

Electricity consumers are divided into broad categories including residential, commercial, large–scale industry, and agriculture. The rates charged by the utilities vary across customer categories and within customer categories based on the amount of electricity consumed. The Huludao Companies and Northern Steel are subject to the standard electricity price for largescale industries in Liaoning Province. Within the industrial categories, there are different rates set based on the level of kilowatt consumption. For certain industrial users, the rates are specifically broken out and these industries receive special, discounted rates. Based on our review of the rate schedules submitted for Liaoning Province, specific discounted rates are not provided to line pipe producers.

Northern Steel provided to the Department a chart of its electricity rates and payments for the POI. The company explained that its electricity rate is equal to the basic rate and actual costs. Based on the information reported by Northern Steel, the electricity rates paid by the company during the POI were higher than the large–scale industries rate listed in the Liaoning Province electricity price schedule.

The Huludao Companies reported that their electricity rates are equal to three rates: offpeak, basic, and peak. Based on the information reported by the Huludao Companies, the electricity rates paid by Huludao Steel Pipe and Huludao Bohai Oil Pipe were equal to the rate schedule applicable to the rate charged to large–scale industries in the Liaoning Province.

Based on the record evidence, we preliminarily determine that the provision of electricity to large–scale industries in Liaoning Province is neither *de jure* nor *de facto* specific because all such industries pay the same rate for their electricity, including the line pipe producers we examined. However, we will continue to examine at verification the electricity rates paid by the respondents during the POI.

B. VAT Export Rebates

According to the GOC, the ''exemption, deduction, and refund'' of VAT applies if a manufacturer exports its self–produced goods by itself or via a trading company. *See* Article 1 of the ''Circular on Further Promotion of Methodology of Exemption, Deduction, and Refund' of Tax for Exported Goods'' (CAISHUI (2002) No. 7) at Exhibit 48 of the GOC's July 9, 2008 questionnaire response. Under the VAT refund system, when a producer/exporter purchases inputs (*e.g.*, raw materials, components, fuel, and power), it pays a VAT based on the purchase price of the inputs. The GOC reported that VAT rates paid by line pipe producers/exporters for inputs are as follows: raw materials (*e.g.*, hot–rolled steel strip) and electricity at a rate of 17 percent; fuel at 13 percent; and water at 6 percent.[40] Once the producer/exporter exports subject merchandise, a VAT payment and tax exemption form is prepared and filed with the relevant tax

[37] Huludao Bohai Oil Pipe did not have any sales in 2006. Therefore, in conducting the ''0.5 percent expense test'' under 19 CFR 351.524(c), we used the 2005 total sales of Huludao Steel Pipe.

[38] *See* GOC's July 9, 2008 questionnaire response at Exhibit 60.

[39] The electricity price schedule was submitted at exhibit D-17 of the GOC's August 21, 2008 questionnaire response.

[40] *See* GOC's July 9, 2008 questionnaire response at 89.

authority. Line pipe exporters receive a VAT refund of 13 percent of the export price.[41]

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted ''exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.'' *See* 19 CFR 351.517(a) and 351.102 (for a definition of ''indirect tax). Information in the respondents' responses show that the Huludao Companies and Northern Steel paid the VAT on their inputs and applied for and received a VAT refund on their export sales.

To determine whether a benefit was provided under this program, we analyzed whether the amount of VAT exempted during the POI exceeded the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Because the VAT rate levied on line pipe in the domestic market (*i.e.*, 17 percent) exceeded the amount of VAT exempted upon the export of line pipe (*i.e.*, 13 percent), we preliminarily determine that, for the purposes of this investigation, the VAT refund received upon export of line pipe by the respondents does not confer a countervailable benefit. We note our finding in this regard is consistent with the Department's practice. *See e.g.*, Tires Decision Memorandum at ''VAT Export Rebates'' section.

V. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the Huludao Companies and Northern Steel did not apply for or receive benefits during the POI under the programs listed below:

A. Preferential Loans

1. Preferential Loans for Key Projects and Technologies

B. Debt–to-Equity Swaps for State–Owned Enterprises

C. Tax Benefit Programs

1. Income Tax Reduction for Export–Oriented FIEs
2. Income Tax Reductions for FIEs Based on Location
3. Preferential Tax Programs for FIEs that Quality as Technology–Intensive or Knowledge Intensive
4. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
5. Preferential Tax Programs for FIEs that are Engaged in Research and Development
6. Income Tax Reduction for FIEs that Reinvest Profits into Export–Oriented Enterprises
7. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs
8. Income Tax Credits on Purchases of Domestically–Produced Equipment by FIEs

D. VAT Programs

1. VAT Exemptions for Use of Imported Equipment

E. Grant Programs

1. Interest Subsidies for Key Projects and Technologies
2. State Key Technologies Renovation Project Fund
3. Central Government's Famous Brands Program
4. Government of Guandong Province Provision of Grants to Companies for Outward Expansion and Export Performance
5. Grants to SOEs Operating at a Loss

F. Provision of Water for Less Than Adequate Remuneration[42]

G. Provincial Programs

1. Liaoning Province Framework
2. Sub–Central Government Programs to Promote Famous Brands

H. New Subsidies Programs

The Huludao Companies and Northern Steel reported non–use of the following programs. The GOC's response to the new subsidies questionnaire was submitted to the Department on August 29, 2008. We, therefore, will continue to examine these programs.

1. Preferential Income Tax Policy for Enterprises in the Northeast Region (Northeast Tax Preference Policy)
2. Provisions on Expanding the Qualifications of Fixed Asset Input VAT Deductions in the Northeast Region (Northeast Region VAT Deduction Program)
3. Haicheng City Government VAT and Business Tax Incentives
4. Debt Forgiveness Provided to Huludao Companies

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the Huludao Companies, Northern Steel, and the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Subsidy Rate
Liaoning Northern Steel Pipe Co., Ltd.	31.65 percent *ad valorem*
Huludao Seven–Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies)	18.89 percent *ad valorem*
All Others	25.27 percent *ad valorem*

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all–others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all–others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all–others rate by weight averaging the rates of the Huludao Companies and Northern Steel because doing so risks disclosure of proprietary information. Therefore, for the all–others rate, we have calculated a simple average of the two responding firms' rates.

In accordance with sections 703(d) (1) (B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

[41] *Id.* at 88.

[42] The Huludao Companies and Northern Steel obtain water directly from their own ground wells. The GOC and Northern Steel reported that the company paid water resource fees to the Haicheng Water Resources Bureau during the POI. The GOC reported that the Huludao Companies did not pay any water fees. (*See* GOC's August 21, 2008 questionnaire response at 33.) We will further examine the payment of water fees at verification.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b) (2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20922 Filed 9–8–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products from the Republic of Korea (Korea) for the period of review (POR) January 1, 2006, through December 31, 2006. For information on the net subsidy for each of the reviewed companies, *see* the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section of this notice.

DATES: *Effective Date*: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW., Washington, D.C. 20230; *telephone*: (202) 482–2209 and (202) 482–3338, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the CVD order on corrosion-resistant carbon steel flat products (CORE) from Korea. *See Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea*, 58 FR 43752 (August 17, 1993). On August 2, 2007, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 42383 (August 2, 2007). On August 31, 2007, we received a timely request for review from Pohang Iron and Steel Co. Ltd. (POSCO) and Dongbu Steel Co., Ltd. (Dongbu). On September 25, 2007, the Department published a notice of initiation of the administrative review of the CVD order on corrosion-resistant carbon steel flat products from Korea covering the POR January 1, 2006, through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). On November 2, 2007, the Department sent its initial questionnaire to POSCO, Dongbu, and the Government of Korea (GOK). On December 20, 2007, the Department received questionnaire responses from POSCO, Pohang Steel Co., Ltd. (POCOS, a production affiliate of POSCO), POSCO Steel Service & Sales Co., Ltd. (POSTEEL, a trading company for POSCO),[1] and Dongbu. On January 7, 2008, the Department received questionnaire responses from the GOK. On March 4, 2008 and April 7, 2008, we issued supplemental questionnaires to POSCO and the GOK. On March 24, 2008 and April 14, 2008, we received responses to these supplemental questionnaires.

On April 28, 2008, the Department published in the **Federal Register** a notice of extension of the time period for issuing the preliminary results. *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 22920 (April 28, 2008).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are POSCO (and its affiliates POCOS and POSTEEL) and Dongbu.

Affiliated Companies

In the present administrative review, record evidence indicates that POCOS is a majority-owned production affiliate of POSCO. Under 19 CFR 351.525(b)(6)(iii), if the firm that received a subsidy is a holding company, including a parent company with its own operations, the Department

[1] In these preliminary results, unless otherwise stated, we use POSCO to collectively refer to POSCO, POCOS, and POSTEEL.

will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. Thus, we attributed any subsidies received by POCOS to POSCO and its subsidiaries, net of intra-company sales. Dongbu reported that it is the only member of the Dongbu group in Korea that was involved with the sale of subject merchandise to the United States.

Scope of Order

Products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.61.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.9030, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Average Useful Life

Under 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (IRS) 1997 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under examination and that the difference between the company-specific and/or country-wide AUL and the AUL from the IRS tables is significant. According to the IRS tables, the AUL of the steel industry is 15 years. No interested party challenged the 15-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 15-year AUL.

Subsidies Valuation Information

A. Benchmarks for Short-Term Financing

For those programs requiring the application of a won-denominated, short-term interest rate benchmark, in accordance with 19 CFR 351.505(a)(2)(iv), we used as our benchmark an annual average company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR. Where no such benchmark instruments are available, we used national average lending rates for the POR, as reported in the International Monetary Fund's (IMF) International Financial Statistics Yearbook. This approach is in accordance with 19 CFR 351.505(a)(3)(ii) and the Department's practice. *See, e.g. , Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051 (July 3, 2000) (H Beams Investigation), and the accompanying Issues and Decision Memorandum (*H Beams Decision Memorandum*) at ''Benchmarks for Short-Term Financing.''

For Dongbu's document acceptance (D/A) loans rediscounted under the Korean Export Import Bank's (KEXIM's) rediscount program, we used, for benchmark purposes, Dongbu's usance loans issued by commercial banks. *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS Paper Investigation*) and accompanying Issues and Decision Memorandum at Comment 18 (CFS Paper Decision Memorandum).

B. Benchmark for Long-Term Loans

During the POR, POSCO and Dongbu had outstanding long-term won-denominated and foreign-currency denominated loans from government-owned banks and Korean commercial banks. Based on our findings on this issue in prior investigations and administrative reviews, we are using the following benchmarks to calculate the subsidies attributable to respondents' countervailable long-term loans obtained through 2006:

(1) For countervailable, foreign-currency denominated loans, pursuant to 19 CFR 351.505(a)(2), and consistent with our past practice, our preference is to use the company-specific, weighted-average foreign currency-denominated interest rates on the company's loans from foreign bank branches in Korea, foreign securities, and direct foreign loans outstanding during the POR. *See, e.g., Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30640 (June 8, 1999) (SSSS Investigation). Where no such benchmark instruments are available, and consistent with 19 CFR 351.505(a)(3)(ii), as well as our practice, we relied on the national average lending rates as reported by the IMF's International Financial Statistics Yearbook. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), and the accompanying Issues and Decision Memorandum at ''Benchmarks for Long-Term Loans and Discount Rates.''

(2) For countervailable, won-denominated, long-term loans, our practice is to use the company-specific corporate bond rate on the company's public and private bonds, as we determined that the GOK did not control the Korean domestic bond market after 1991 and that domestic bonds may serve as an appropriate benchmark interest rate. *See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) (*Plate in Coils Investigation*); *see also* 19 CFR 351.505(a)(2)(ii). Where no such benchmark instruments are available, we used the national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK), consistent with 19 CFR 351.505(a)(3)(ii). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils Investigation*, in which we

determined that, absent company-specific interest information, the corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea. *See Plate in Coils Investigation*, 64 FR at 15531; *see also* 19 CFR 351.505(a)(3)(ii).

In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. For countervailable variable-rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(5)(i), our preference is to use the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such benchmark instruments are unavailable, we used interest rates from debt instruments issued during the POR as our benchmarks, as such rates better reflect a variable interest rate that would be in effect during the POR. This approach is in accordance with the Department's practice. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 8; *see also* 19 CFR 351.505 (a)(5)(ii).

I. Program Preliminarily Determined To Confer Subsidies

A. The GOK's Direction of Credit

In the *Plate in Coils Investigation*, 64 FR 15530, 15532–33 (March 31, 1999) and in the *SSSS Investigation*, 64 FR 30636, 30641–42 (June 8, 1999), the Department determined that the GOK controlled directly and indirectly the lending practices of most sources of credit in Korea through 1997. Furthermore, the Department determined that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development bank (KDB) was specific to the steel industry. In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73179 (December 29, 1999) (*CTL Plate Investigation*) and in the *H Beams Investigation* and H Beams Decision Memorandum at ''GOKs Credit Policies from 1992 through 1998,'' the Department determined that the GOK's directed lending practices continued to be specific with respect to the steel industry through 1998.

In every subsequent CVD investigation or administrative review of a Korean steel product covering a period of investigation (POI) or POR from 2000 to 2005, we provided the GOK an opportunity to present new factual information concerning the government's credit policies, which we would consider along with our findings in prior investigations. For every POI or POR covering the years 2000 to 2005, respondents decided not to provide new information on the GOK's lending policies for domestic banks. Therefore, with respect to each of the years from 2000 to 2005, consistent with section 776 of the Act, we found that the GOK's direction of credit policies to the steel industry continued through the period 2000 to 2005. *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102, (October 3, 2002) (*Cold-Rolled Investigation*), and accompanying Issues and Decision Memorandum at ''GOK Directed Credit'' (Cold-Rolled Decision Memorandum); *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*SSSS 2004 Review*), and accompanying Issues and Decision Memorandum at ''The GOK's Direction of Credit'' (SSSS 2004 Review Decision Memorandum); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007) (*CTL Plate 2007 Review*), and accompanying Issues and Decision Memorandum at ''The GOK's Direction of Credit'' (CTL Plate 2007 Review Decision Memorandum).

The Department's last determination of the GOK's directed credit policies not based on adverse facts available (AFA) was in the *H Beams Investigation*, which covered calendar year 1998. *See* H Beams Decision Memorandum at ''GOK's Credit Policies from 1992 through 1998.'' In its June 7, 2000, memorandum regarding direction of credit in the *H Beams Investigation*, the Department noted that: (1) The history of GOK intervention in the credit market from the 1960s into the 1990s including the Heavy and Chemical Industry (HCI) promotion program that was introduced in the 1980s; (2) an IMF Working Paper that concluded that the GOK continued to favor priority sectors with credit and that financial institutions believed that the government would protect them on risky lending on unprofitable projects; [2] (3) a 1999 OECD report that stated that the GOK exerted immense pressure and directed much of the country's lending activities, often on the basis of political whim rather than a proper evaluation of risk; [3] (4) a World Bank study illustrating Korea's selective allocation of credit which also concluded that the promotion of the steel industry was one of the top priorities of the GOK; [4] (5) an Agreement with the IMF in which the GOK explicitly stated it would stop directing credit; [5] (6) a Korean Presidential Commission report on the government's pervasive influence and intervention in the country's financial sector; [6] (7) the fact that the Korean steel industry was one of the top recipients of KDB lending during the time in which the KDB was the largest source of long-time financing in Korea; and (8) industry-specific costs of borrowing as reported in the *Bank of Korea's Financial Statement Analysis* and the steel industry's access to the foreign loan market that was controlled by the GOK. In the *H Beams Investigation*, the GOK argued that measures were taken in 1998 to liberalize the Korean financial sector. *See* H Beams Decision Memorandum at ''GOKs Credit Policies from 1992 through 1998.'' However, in our analysis of the financial reforms for our final determination, the Department stated that while the GOK started to plan and implement reforms in the

[2] Borsesztein, Eduardo and Jong-Wha Lee, *Credit Allocation and Financial Crisis in Korea* (an International Monetary Fund Working Paper), February 1999. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, ''Information Regarding Reforms to the Korean Financial System,'' at Attachment 1 (August 11, 2008) (Direction of Credit Memorandum), a public document on file in the Central Records Unit, room 1117 of the Main Commerce Building.

[3] OECD, Asia and the Global Crisis—*The Industrial Dimension*,1999. *See* Memorandum from Melissa G. Skinner, Director, Office of CVD/AD Enforcement VI to Holly A. Kuga, Acting Deputy Director for Import Administration, ''Direction of Credit in Korea: Structural Steel Beams from the Republic of Korea'' (June 7, 2000), which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response at Exhibit A–2 (Direction of Credit Memorandum for H Beams).

[4] World Bank, *Credit Policies and the Industrialization of Korea*, 1995 World Bank Study. *See* Direction of Credit Memorandum for H Beams, which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response at Exhibit A–2.

[5] *See, e.g.*, December 3, 1997, Letter of Intent of the Government of Korea to IMF, and December 5, 1997, Republic of Korea IMF Stand-By Arrangement, which are included as Attachment 2 of the Direction of Credit Memorandum.

[6] The Presidential Commission for Financial Reform, *Financial Reform in Korea: The Third Report*, 1997. *See* Direction of Credit Memorandum for H Beams, which is on the record of this administrative review at GOK's January 7, 2008 Questionnaire Response, at Exhibit A–2.

financial sector during 1998, the record evidence indicated that the GOK's previous attempts at removing or reducing its controls and influence over lending in the country were not successful. We noted that, in the ten years prior to 1998, the GOK twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the GOK deemed the 1988 liberalization a failure because when interest rates began to rise, the GOK cancelled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, the GOK deemed this attempt to reform the financial system a failure. We also noted in the *H Beams Investigation* that, during 1998 and 1999, despite its apparent liberalization attempts, the GOK threatened to cut off credit to Korean companies unless the companies followed GOK policies. *Id.* In addition, during this period the GOK took control of five large commercial banks due to the financial crisis.

Thus, while the Department acknowledged in the *H Beams Investigation* that the GOK was attempting to make reforms in the financial sector in 1998 and 1999, we concluded that the then status of these reforms was not enough to change our affirmative direction of credit determination because: (1) The GOK had tried twice before within a ten-year period to implement financial reforms and failed at each attempt; and (2) the GOK was undermining its reform attempts by threatening to cut off lending to Korean firms and by taking control of large commercial banks. *Id.* Subsequent to our determination in the *H Beams Investigation*, the GOK did not provide any new information on financial reforms implemented after 1997 in any administrative review of any outstanding CVD order covering the Korean steel industry; therefore, the Department has not revisited our direction of credit determination with respect to the steel industry.

During the POR, POSCO and Dongbu had outstanding loans that were received prior to and/or during the 2006 POR. As in the prior proceedings, we requested that the GOK provide information pertaining to the GOK's direction-of-credit policies through 2006.

In its January 7, 2008, questionnaire response in the instant review, the GOK provided new information on the issue of directed credit and the status of reforms within the financial sector for the period 2002 through 2006.[7] Based on this new information and the reforms implemented in the Korean financial sector after the 1997 Financial Crisis, the GOK concludes that the Department should now find that the GOK does not direct credit to the steel industry.

In this administrative review, the GOK states that, based on the significant and sweeping reforms of the Korean financial sector after the 1997 Financial Crisis, the Department held in *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Affirmative Countervailing Duty Determination* (*DRAMS Investigation*) that the Korean financial sector did not direct credit to the semiconductor industry after 1998. *See DRAMS Investigation*, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum at ''Direction of Credit and Other Financial Assistance'' (DRAMS Decision Memorandum). The GOK states that reforms have continued at a fast pace since 1998, more banks have been privatized, and numerous reforms have been implemented in order to enhance the financial strength and independence of the banking sector. The GOK notes that the Corporate Restructuring Promotion Act requires banks to undertake ongoing evaluations of their customers and their financial health to avoid insolvency and to take steps to restructure the debtors that become credit risks.

The GOK states that when the Department made its initial finding of directed credit to the steel industry, the Department noted that the availability of long-term lending in Korea was predominantly controlled by the state-owned KDB. The GOK notes that there are now numerous sources of long-term funds available in the Korean market including loans from commercial banks. A comparison of outstanding loans from the KDB and loans sourced from commercial banks shows that commercial banks provide the majority of long-term lending in Korea. *See* Government of Korea's January 7, 2008 Questionnaire Response at Exhibit A–5 (GOK's January QR). Furthermore, there are now other means for companies to finance long-term debt such as issuing bonds and notes in Korea and internationally. *See* GOK's January QR at 8.

According to the questionnaire response submitted by the GOK in this administrative review, in the wake of the 1997 Financial Crisis, the GOK launched a financial sector restructuring program aimed at maintaining a functioning financial system and, at the same time, making it more market-oriented. Nearly a quarter of Korea's financial institutions, including nine of 26 commercial banks at the time, were ultimately closed. To improve the supervisory framework, the Financial Supervisory Commission (FSC), a unified body covering banking, insurance, non-banks and the capital market, was established. The FSC was established under the Act on Establishment of Financial Supervisory Organizations enacted in December 1997 and last amended in 2003, with a view to contributing to the development of the national economy by establishing an orderly and sound credit system. The FSC supervises financial institutions, including commercial banks, and takes regulatory actions in accordance with the applicable statutes. Other than general regulatory functions, the FSC does not intervene in the daily operations, including credit evaluation or extensions decisions, of financial institutions. The FSC's supervisory functions in relation to bank's credit services are confined to ensuring compliance with credit limits, the provision of adequate reserves, and other ordinary affairs as necessary to determine the soundness of operation of the financial institution. Since the creation of the FSC in 1998, the Ministry of Finance and Economy's authority over the establishment of banks and the supervision of banks has shifted to the FSC.

The GOK also states that it does not intervene in the decision-making process for the direction or regulation of credit, or for deposit and lending rates, which are entirely reserved for the discretion of individual financial institutions. As a measure in the course of prudential regulation, the Financial Supervisory Service (FSS) issued a Sample Guideline for Credit Risk Assessment and a Notification to Financial Institutions Regarding Risk Evaluation System for Corporations, for the purpose of enhancing the risk evaluation system by individual financial institutions.[8] These documents

[7] The GOK stated that it chose not to respond to direction of credit questions in previous administrative reviews of steel products covering periods after 2000 because of the considerable burden of responding to the Department's questions and the very small impact of the Department's finding of directed credit on respondents (especially given that the aggregate company-specific subsidy rates were *de minimis*).

[8] The FSS was established on January 2, 1999, under the Act on the Establishment of Financial Supervisory Organizations by bringing together four supervisory bodies—Banking Supervisory Authority, Securities Supervisory Board, Insurance Supervisory Board, and Non-Bank Supervisory

provide simple basic guidelines but do not offer specific details for the banks to follow in managing their credit extensions. The GOK states that all bank-specific policies on lending and credit evaluation are established by individual banks.

The GOK states that it does not provide any guidance with regard to the commercial interest rates to be charged for loans by Korean commercial banks. Specific interest rates to be charged by financial institutions are only determined by the respective financial institution itself. As such, interest rates differ from bank to bank depending upon the policies taken by individual banks, the nature of the loans, the current conditions of the financial market, and the creditworthiness of the borrower.

The Prime Minister's Decree 408, enacted in November 2000, sets forth that the government should not intervene in the general management of the banks. Furthermore, the Depositors Protection Act, revised in January 2000, in turn sets forth that the officers and employees who are responsible for the financial troubles of the financial institutions should compensate for the damages personally and individually. Therefore, the GOK states, not only are GOK officials prohibited from intervening in the daily business operation of the banks, but also any GOK official making such an attempt would assume civil and criminal liability in a personal capacity.

According to the GOK's questionnaire response, during 2004 through 2006, no Korean commercial bank was taken over or administered by the GOK due to bank restructurings in Korea. Furthermore, the GOK has privatized most of the commercial banks that it took over as a result of the 1997 Financial Crisis. Many of these commercials banks, such as SC First and the Korean Exchange Bank (KEB), have majority ownership by foreign interests. For other commercial banks such as Kookmin, foreign shareholders are the major shareholders of the bank. Currently only one commercial bank, Woori, has majority ownership by the GOK. According to the GOK, the Korea Deposit Insurance Corporation owns approximately 80 percent of Woori.

With respect to other lending sources found countervailable in prior directed credit determinations, the National Investment Fund (NIF) was liquidated on January 2, 2003. The NIF supported heavy and chemical industries during the period from 1974 to 1991 by extending loans raised through the issuance of national investment bonds to financial institutions. The GOK also noted that the Department determined that access to foreign securities and direct foreign loans after April 1999 is no longer countervailable.

Finally, the GOK argues that, in *Coated Free Sheet Paper from the Republic of Korea: Notice of Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17507 (April 9, 2007) (*CFS Paper Preliminary Determination*), the Department reaffirmed its finding in the *DRAMS Investigation* that: (1) Distinguished between banks that are government authorities and banks with some government ownership (as a result of the 1997 Financial Crisis) that acted as commercial banks and (2) measured the specificity of long-term loans to the paper sector only with respect to GOK-owned banks that were government authorities. *See CFS Paper Preliminary Determination* at 72 FR 17511–17512, 17517. The GOK noted that, in the *CFS Paper Investigation*, 72 FR 60639 (October 25, 2007), the specificity test used by the Department demonstrated that long-term loans from GOK-owned banks were not specific to the paper sector. *See CFS Paper Investigation* and CFS Paper Decision Memorandum at ''Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions.'' The GOK states that a comparable analysis demonstrates that long-term loans from GOK-owned banks are not specific to the steel industry during the POR.

We find that the new information submitted by the GOK is sufficient to warrant a re-examination of the Department's direction of credit determination made with respect to the Korean steel industry. As noted above, the Department last reviewed new information in the *H Beams Investigation*, in which we stated that, although the GOK was starting to implement reforms of the financial sector, these reforms were, in part, undermined by the GOK's taking control of commercial banks and the fact that previous attempts at reforms were not successful. *See* H Beams Decision Memorandum at ''GOK's Credit Policies from 1992 through 1998.''

Our determination in the *H Beams Investigation* reviewed the attempts of the GOK to reform the financial sector in 1998 and 1999. *Id.* The GOK has now provided new information on the details of the financial sector reforms that were implemented in the wake of the 1997 Financial Crisis, arguing that these reforms have removed the controls that led to the Department's determination of direction of bank credit. While the information submitted by the GOK supports its arguments regarding reforms of the banking sector, our original directed credit determination relied on independent sources detailing GOK control and direction of bank credit. Thus, it is appropriate to also review those independent sources to determine if these sources substantiate the information submitted by the GOK in this administrative review. However, before this review of independent research on GOK financial reforms, it is important to review the Department's determinations regarding directed credit made in both the *DRAMS Investigation* and the *CFS Paper Investigation*.

In its questionnaire response, the GOK states that since the directed credit determination regarding the Korean steel industry, the Department has addressed directed credit in investigations of two non-steel products, the *DRAMS Investigation* and the *CFS Paper Investigation*, and reached different conclusions with respect to directed credit from Korean banks.

In the *DRAMS Investigation*, the Department first examined the GOK's credit policies through 1998. *See DRAMS Investigation*, and DRAMS Decision Memorandum at ''The GOK's Credit Policies Through 1998.'' The Department stated that it had found that the GOK controlled the lending practices of banks in Korea in prior cases involving the Korean steel industry and had determined in the *H Beams Investigation* that the GOK directed credit through 1998. Although in the *DRAMS Investigation* the Department provided the GOK with an opportunity to present new factual information concerning the GOK's direction of long-term lending through 1998, no new information was presented. *See* DRAMS Decision Memorandum at 12. Therefore, in the *DRAMS Investigation*, the Department determined that the GOK continued to control, directly and indirectly, the long-term lending practices of Korean domestic banks through 1998. *See* DRAMS Decision Memorandum at ''The GOK's Credit Policies Through 1998.'' However, the respondents in the *DRAMS Investigation* provided new information with respect to whether the GOK directed bank credit for the period 1999 through June 30, 2002. *See* DRAMS Decision Memorandum at ''The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002.'' Therefore, the Department

Authority—into a single supervisory organization. The primary function of the FSS is examination and supervision of financial institutions but can extend to other oversight and enforcement functions as charged by the Financial Services Commission (the former Financial Supervisory Commission) and the Securities and Futures Commission.

analyzed this information to determine whether the GOK continued to direct credit from domestic banks after 1999. Based on this analysis, the Department determined in the *DRAMS Investigation* that the GOK only directed credit to a group of companies that were part of the Hyundai group, including DRAMs manufacturer, Hynix. *Id.*

In the *CFS Paper Investigation*, the Department stated that, although the GOK exerted broad control over lending through 1998 that resulted in credit being directed specifically to strategic industries such as steel and semiconductors, there was not sufficient information to conclude that the paper industry was designated as a strategic industry by the GOK and, thus, a beneficiary of directed credit. *See* CFS Paper Decision Memorandum at ''Direction of Credit to the Pulp and Paper Sector.'' In *CFS Paper Investigation*, the Department also separately examined the provision of long-term lending provided by the KDB and other GOK-owned institutions, and found that KDB lending was not specific to the paper industry. *See* CFS Paper Decision Memorandum at ''Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions.''

Our review of independent research on the post-financial crisis reforms within the Korean financial and banking sector, as discussed further below, support the statements made by the GOK in this review. Our review also provided no evidence of continued GOK systemic control of banking credit within Korea, including banking credit directed towards the Korean steel industry.

In the period after the 1997 Financial Crisis and leading up to 2002, the GOK implemented a number of reforms in the financial sector. As noted by many experts, the Korean financial sector was long characterized by government intervention and a discretionary implementation of rules where the GOK played a crucial role in credit resource allocation.[9] The Korean banking sector suffered due to inefficient internal management and GOK intervention in the financial sector prevented the development of market discipline. Furthermore, selective credit allocation by the government resulted in an inefficient and distorted financial system.[10]

The GOK controlled the allocated financial resources by managing both the commercial banks and the state-owned special banks.[11]

As discussed in the GOK's questionnaire response, after the 1997 Financial Crisis, the GOK implemented a number of reforms of the financial sector, many at the behest of the IMF. The GOK actively implemented the IMF's suggested reforms, which included structural reforms of the financial system.[12] For example, the GOK introduced a new financial supervisory system to prevent moral hazard. As discussed above, the FSS was created in an attempt to overcome inconsistent treatment of different institutions and to meet international standards of financial supervision.[13] The GOK increased the independence of the Bank of Korea (BOK) from the Ministry of Finance and Economy (MOFE), and stripped the regulatory powers out of both the BOK and MOFE and located them in an independent regulatory agency.[14]

Korea's progress in strengthening its supervision of financial institutions was especially significant; Korean commercial banks adopted Western-style board governance systems, where the majority of board members are outside directors.[15] During the restructuring process, the GOK pursued a policy of encouraging the entry of foreign banks and all the regulatory obstacles that stood in the way of foreign entry were eased.[16] The IMF has noted that the Korean banking system was transformed after the 1997 Financial Crisis and noted that Korean banks strengthened their commercial orientation, allowing them to refocus their activities on their most profitable lending activities.[17] The long-held belief that ''banks never fail because the government will bail them out'' faded away.[18] The reforms that were implemented by the GOK after the 1997 Financial Crisis changed the ways banks were operated as well as the patterns of the asset allocation behavior of banking institutions.[19] The IMF concluded that since the Financial Crisis, the GOK accelerated its shift towards a market-oriented development strategy and that direct credit was abolished.[20]

Based on the Department's decision on Korean directed credit policies in both the *DRAMS Investigation* and the *CFS Paper Investigation*, the information submitted by the GOK in this review regarding directed credit and reforms in the financial sector for the period 2002–2006, and our substantiation of this submitted information through independent research, we determine that the GOK no longer has a systemic practice of directing credit within the Korean financial sector and that directed credit within the Korean steel industry ended as of 2002.

With regard to the period prior to 2002, the GOK provided some information regarding its lending policies, and Dongbu and POSCO reported receiving long-term loans prior to 2002. However, even assuming that the GOK's actions during this period constituted direction of credit, any potential benefit to Dongbu and POSCO during this POR is less than 0.005 percent. As explained in *Coated Free Sheet Paper from the People's Republic of China: Final Determination of Countervailing Duty Investigation*, 72 FR 60645 (October 25, 2007) (*CFS Paper from China Investigation*), and accompanying Issues and Decision Memorandum at ''Purchases at Prices that Constitute More than Adequate Remuneration'' (CFS Paper from China Decision Memorandum), where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total CVD rate. Hence, we preliminarily find

[9] Kyung Tae Lee and Inkoo Lee, ''*Crisis, Reforms, and Structural Changes in the Korean Economy*,'' October 6, 2007, at 4. *See* Direction of Credit Memorandum, at Attachment 3.

[10] Takatoshi Ito and Yuko Hashimoto, ''*Banking Restructuring in Asia: Crisis Management in the Aftermath of the Asian Financial Crisis and Prospects for Crisis Prevention—Korea*,'' February 5, 2007, at 17. *See* Direction of Credit Memorandum, at Attachment 4.

[11] Jahyeong Koo and Sherry L. Kiser, ''*Recovery from a Financial Crisis: The Case of South Korea*,'' Economic and Financial Review, Fourth Quarter 2001, Federal Reserve Bank of Dallas, at 25. *See* Direction of Credit Memorandum, at Attachment 5.

[12] Jai S. Mah, ''*The Restructuring in the Post-Crisis Korean Economy*,'' November 2003. *See* Direction of Credit Memorandum at Attachment 6.

[13] Kyung Tae Lee and Inkoo Lee, ''*Crisis, Reforms, and Structural Changes in the Korean Economy*,'' October 6, 2007, at 4. *See* Direction of Credit Memorandum, at Attachment 3.

[14] Stephan Haggard and Andrew MacIntyre, ''*The Politics of Moral Hazard: The Origins of Financial Crisis in Indonesia, Korea and Thailand*,'' August 1999. *See* Direction of Credit Memorandum, at Attachment 7.

[15] Dr. Janet Yellen, President and CEO of the Federal Reserve Bank of San Francisco, ''*The Asian Financial Crisis Ten Years Later: Assessing the Past and Looking to the Future (Speech)*,'' February 6, 2007. *See* Direction of Credit Memorandum at Attachment 8.

[16] Soo-Myung Kim, Ji-Young Kim and Hoon-Tae Ryoo, ''*Restructuring and Reforms in the Banking Industry*,'' BIS Papers No. 28 at 267. *See* Direction of Credit Memorandum, at Attachment 9.

[17] International Monetary Fund (IMF), ''*IMF Country Report No. 04/44*,'' February 2004, at 6. *See* Direction of Credit Memorandum at Attachment 10.

[18] Soo-Myung Kim, Ji-Young Kim and Hoon-Tae Ryoo, ''*Restructuring and Reforms in the Banking Industry*,'' BIS Papers No. 28 at 259. *See* Direction of Credit Memorandum, at Attachment 11.

[19] Eui-Gak Hwang, ''*Banking Sector Restructuring in Korea After the 1997–1998 Crisis*,'' at 13. *See* Direction of Credit Memorandum, at Attachment 12.

[20] International Monetary Fund (IMF), ''*IMF Country Report No. 05/49*,'' February 2005, at 5. *See* Direction of Credit Memorandum, at Attachment 13.

that any long-term loans provided prior to 2002 and outstanding during the POR did not confer a measurable benefit to Dongbu or POSCO during the POR. Accordingly, it is unnecessary to make a finding as to the countervailability of the GOK's Direction of Credit program prior to 2002 for this administrative review.

Therefore, for purposes of this review, we determine that there is no directed credit to the Korean steel industry from 2002. This decision is restricted to the post-2001 period that was addressed by the GOK in its questionnaire response. Furthermore, our determination in this review does not change the decision that was made by the Department in *DRAMS Investigation* that there may still be instances in which the GOK may attempt to influence bank decisions on an *ad hoc* basis such as the government-led financial restructuring of Hynix. Accordingly, loans that were issued to the respondents from private Korean commercial banks and government-owned banks from January 1, 2002, onward are not countervailable. We note that, as described below, we are still examining loans provided by the KDB, as it is a government policy bank.

We have decided to modify our treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act. In both the *DRAMS Investigation* and the *CFS Paper Investigation*, we accorded different treatment under this section of the Act to government-owned banks that were commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.

This modification of our treatment of government-owned commercial banks has no effective impact on our directed credit determination, but it provides uniformity of treatment for all government-owned entities and is more consistent with our regulations.

As discussed above, we are only countervailing directed credit provided prior to January 1, 2002. In accordance with 19 CFR 351.505(c)(2) and (4), we calculated the benefit for each fixed- and variable-rate loan received from GOK-owned or -controlled banks to be the difference between the actual amount of interest paid on the directed loan during the POR and the amount of interest that would have been paid during the POR at the benchmark interest rate. We conducted our benefit calculations using the benchmark interest rates described in the ''Subsidies Valuation Information'' section above. For foreign currency-denominated loans, we converted the benefits into Korean won using exchange rates obtained from the BOK. We then summed the benefits from each company's long-term fixed-rate and variable-rate won-denominated loans.

To calculate the net subsidy rate, we divided the companies' total benefits by their respective total f.o.b. sales values during the POR, as this program is not tied to exports or a particular product. In calculating the net subsidy rate for POSCO, we removed from the denominator sales made between affiliated parties.[21] On this basis, we preliminarily determine the subsidy rate under the direction of credit program to be less than 0.005 percent *ad valorem* for POSCO and less than 0.0005 percent *ad valorem* for Dongbu.

B. Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. The Department has previously found this program to be countervailable. For example, in the *CTL Plate Investigation*, the Department determined that this program was *de facto* specific under section 771(5A)(D)(iii) of the Act because the actual recipients of the subsidy were limited in number and the basic metal industry was a dominant user of this program. *See CTL Plate Investigation*, 64 FR at 73183. We also determined that a financial contribution was provided in the form of tax revenue foregone pursuant to section 771(5)(D)(ii) of the Act. *Id.* The Department further determined that a benefit was conferred within the meaning of section 771(5)(E) of the Act on those companies that were able to revalue their assets under TERCL Article 56(2) because the revaluation resulted in participants paying fewer taxes than they would otherwise pay absent the program. *Id.* No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. Evidence on the record indicates that, in 1989, POSCO made an asset revaluation that increased its depreciation expense. Dongbu reported that it did not use this program during the POR. To calculate the benefit to POSCO, we took the additional depreciation listed in the tax return filed during the POR, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit by POSCO's total f.o.b. sales. On this basis, we preliminarily determine the net countervailable subsidy to be 0.02 percent *ad valorem* for POSCO. This program was not used by Dongbu.

C. Research and Development (R&D) Grants Under the Industrial Development Act (IDA)

The GOK, through the Ministry of Commerce, Industry, and Energy (MOCIE), provides R&D grants to support numerous projects pursuant to the IDA, including technology for core materials, components, engineering systems, and resource technology. The IDA is designed to foster the development of efficient technology for industrial development. To participate in this program a company may: (1) Perform its own R&D project, (2) participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. If the R&D project is not successful, the company must repay the full amount.

[21] For POSCO, we also removed intra-company sales from the denominators of the net subsidy rate calculations of the other programs found countervailable in these preliminary results. This step was not necessary for Dongbu.

In the *H Beams Investigation*, the Department determined that through KNISTRA the Korean steel industry receives funding specific to the steel industry. Therefore, given the nature of KNISTRA, the Department found projects under KNISTRA to be specific. *See Preliminary Negative Countervailing Duty Determination with Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea*, 64 FR 69731, 69740 (December 14, 1999) (unchanged in the final determination and the H Beams Decision Memorandum, at ''R&D Grants Under the Korea New Iron & Steel Technology Research Association (KNISTRA)''). Further, we found that the grants constituted a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and bestowed a benefit under section 771(5)(E) of the Act in the amount of the grant. *Id*. No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we preliminarily continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act and constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

Dongbu reported that it did not use the program during the POR. POSCO reported receiving grants through KNISTRA during the POR; however, it claims that the research grants it received under the program are tied to non-subject merchandise. Upon review of the information submitted by the GOK and POSCO, we preliminarily determine that certain grants are tied to non-subject merchandise, and thus, we did not include these grants in our benefit calculations. *See* the GOK's January 4, 2008, Questionnaire Response, at Exhibit G–6; POSCO's April 18, 2008, Supplemental Questionnaire Response; and POSCO's May 8, 2008, Supplemental Questionnaire Response.

However, POSCO also reported receiving certain other grants related to new technologies that can be applicable for both inputs of subject merchandise as well as subject merchandise. *See* POSCO's December 20, 2007, Questionnaire Response, at Exhibit 6; and ''Memorandum to the File through Eric Greynolds, ''Factual Information Regarding the Steel Production Process'' (September 2, 2008). Some of these R&D grants were examined in previous reviews of this case and found to provide countervailable benefits to POSCO. *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 73 FR 2444 (January 15, 2008) (*2005 CORE from Korea*), and the accompanying Issues and Decision Memorandum at Comment 2 (2005 CORE from Korea Decision Memorandum). In this administrative review, as in the previous administrative review of this case, there is nothing on the record that demonstrates that the R&D projects in question could not be used in the production of subject merchandise or that this new technology is limited to the development of non-subject merchandise. Therefore, we find in these preliminary results, as in prior reviews, that the R&D grants in question provide a countervailable benefit to POSCO during the 2006 POR.

In addition, in the instant review POSCO provided information on several R&D projects for which 2006 is the first year that a grant was received. The GOK's and POSCO's information with respect to the R&D projects initially funded in 2006 indicates that some of these grants are tied specifically to non-subject merchandise. *See* GOK's January 4, 2008, Questionnaire Response, at Exhibit G–6; POSCO's April 18, 2008, Supplemental Questionnaire Response at page 1 and Exhibit G–10; and POSCO's May 8, 2008, Supplemental Questionnaire Response, at page 2. Therefore, we did not include the grants that are tied to non-subject merchandise in our calculations in these preliminary results. With respect to the other R&D grants related to projects initially funded in 2006, there is no information provided in POSCO's questionnaire responses that demonstrates that the new technologies developed in this R&D project are limited to non-subject merchandise and could not be used to develop a hot-rolled technology for the subject merchandise. See POSCO's April 18, 2008, Supplemental Questionnaire Response at pages 1 and 2 and Exhibit G–10, and POSCO's May 8, 2008, Supplemental Questionnaire at pages 1 and 2. Moreover, with respect to another project initially funded in 2006, we find that this project involves developing methods that could be applicable to inputs to both subject merchandise and non-subject merchandise. Under 19 CFR 351.525(b)(5), if a subsidy is tied to the production or sale of a particular product, the Department will attribute the subsidy only to that product. But, under sub-paragraph (ii), if a subsidy is tied to the production of an input product, then the Department will attribute the subsidy to both the input and downstream products produced by a corporation, where the input is primarily dedicated to downstream products. Accordingly, we have attributed the grant related to a production process that can be used as an input into the production of subject merchandise to POSCO's total sales.

To determine the benefit from the grants that POSCO received through KNISTRA, we calculated the GOK's contribution for each R&D project. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over POSCO's AUL by dividing the approved amount by POSCO's total sales in the year of approval. Because the approved amounts were less than 0.5 percent of POSCO's total sales in the year of receipt, we expensed the grants to the year of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by POSCO's total f.o.b. sales during the POR. On this basis, we preliminarily determine POSCO's net subsidy rate under this program to be 0.01 percent *ad valorem.*

D. Exemption of VAT on Imports of Anthracite Coal

Under Article 106 of Restriction of Special Taxation Act (RSTA), imports of anthracite coal are exempt from the value added tax (VAT). In the *Cold-Rolled Investigation,* we determined that the program is *de jure* specific under section 771(5A)(D)(i) of the Act. Because the GOK allows for only a few items to be exempt from VAT, the items allowed to be imported without paying VAT are limited. *See* Cold-Rolled Decision Memorandum at ''Exemption of VAT on Imports of Anthracite Coal.'' We also determined that the VAT exemptions under the program constitute a financial contribution under section 771(5)(D)(ii) of the Act, as the GOK is not collecting revenue otherwise due, and that the exemptions confer a benefit under section 771(5)(E) of the Act equal to the amount of the VAT that would have otherwise been paid if not for the exemption. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we preliminarily continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited, constitutes a financial contribution in the form of forgone revenue under section 771(5)(D)(ii) of the Act, and confers a benefit in the amount of the revenue

foregone within the meaning of 771(5)(E) of the Act.

Dongbu reported that it did not use the program during the POR. POSCO imported anthracite coal during the POR and, therefore, received a benefit in the amount of the VAT that it should have otherwise paid if not for the exemption. To determine POSCO's benefit from the VAT exemption on these imports, we calculated the amount of VAT that would have been due absent the program on the total value of anthracite coal POSCO imported during the POR. We then divided the amount of this tax benefit by POSCO's total f.o.b. sales. Based on this methodology, we preliminarily determine the POSCO received a countervailable subsidy of 0.06 percent *ad valorem.*

E. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under Harbor Act

1. Provision of Land

As explained in the *Cold-Rolled Investigation,* the GOK's overall development plan is published every 10 years and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. *See* Cold-Rolled Decision Memorandum at ''Provision of Land at Asan Bay.'' The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites. *Id.*

In the *Cold-Rolled Investigation,* we verified that the GOK, in setting the price per square meter for land at the Kodai Industrial Estate, removed the 10 percent profit component from the price charged to Dongbu. *Id.* In the *Cold-Rolled Investigation,* we further explained that companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. However, in the case of Dongbu, we found that the GOK provided an adjustment to Dongbu's final payment to account for ''interest earned'' by the company for the pre-payments. *Id.* POSCO reported that it did not use this program.

In the *Cold-Rolled Investigation,* we determined that the price discount and the adjustment of Dongbu's final payment to account for ''interest earned'' by the company on its pre-payments were countervailable subsidies. Specifically, the Department determined that they were specific under section 771(5A)(D)(iii)(I) of the Act, as they were limited to Dongbu. *Id.* Further, the Department found the price discount and the price adjustment for ''interest earned'' constituted financial contributions in the form of grants under section 771(5)(D)(i) of the Act and conferred benefits in the amount of grants within the meaning of section 771(5)(E) of the Act. *Id.* No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we preliminarily continue to find that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because it is limited to Dongbu, constitutes a financial contribution in the form of grants under sections 771(5)(D)(i), and confers a benefit in the amount of the price discount and the price adjustment within the meaning of 771(5)(E) of the Act.

Consistent with the *Cold-Rolled Investigation,* we have treated the land price discount and the interest earned refund as non-recurring subsidies. *Id.* In accordance with 19 CFR 351.524(b)(2), because the grant amounts were more than 0.5 percent of the company's total sales in the year of receipt, we applied the Department's standard grant methodology, as described under 19 CFR 351.524(d)(1), and allocated the subsidies over a 15-year allocation period. See the ''Average Useful Life'' section above. To calculate the benefit from these grants, we used as our discount rate the rates described above in the ''Subsidies Valuation Information'' section. We then summed the benefits received by Dongbu during the POR. We calculated the net subsidy rate by dividing the total benefit attributable to the POR by Dongbu's total f.o.b. sales for the POR. On this basis, we determine a net countervailable subsidy rate for Dongbu of 0.20 percent *ad valorem* for the POR.

2. Exemption of Port Fees Under the Harbor Act

Under the Harbor Act, companies are allowed to construct infrastructure facilities at Korean ports; however, these facilities must be deeded back to the government. Because the ownership of these facilities reverts to the government, the government compensates private parties for the construction of these infrastructure facilities. Because a company must transfer to the government its infrastructure investment, under the Harbor Act, the GOK grants the company free usage of the facility and the right to collect fees from other users of the facility for a limited period of time. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure.

In the *Cold-Rolled Investigation,* the Department found that Dongbu received free use of harbor facilities at Asan Bay based upon both its construction of a port facility as well as a road that the company built from its plant to its port. *See* Cold-Rolled Decision Memorandum at ''Dongbu's Excessive Exemptions under the Harbor Act.'' The Department also determined that Dongbu received an exemption of harbor fees for a period of almost 70 years under this program. *See id.*

In the *Cold-Rolled Investigation,* the Department found the exemption from the fees to be a countervailable subsidy. No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Thus, we preliminarily continue to find that the program is countervailable and is specific under section 771(5A)(D)(iii)(I) of the Act because the excessive exemption period of 70 years is limited to Dongbu. Moreover, we preliminarily determine that the GOK is foregoing revenue that it would otherwise collect by allowing Dongbu to be exempt from port charges for up to 70 years and, thus, the program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that the exemptions confer a benefit under section 771(5)(E) of the Act in the amount of the port charges that were not collected.

In the *Cold-Rolled Investigation,* the Department treated the program as a recurring subsidy and determined that the benefit is equal to the average yearly amount of harbor fee exemptions provided to Dongbu. *Id.* For purposes of these preliminary results, we have employed the same benefit calculation. To calculate the net subsidy rate, we divided the average yearly amount of exemptions by Dongbu's total f.o.b. sales for the POR. On this basis, we preliminarily determine that Dongbu's net subsidy rate under this program is 0.02 percent *ad valorem.*

E. Short-Term Export Financing

KEXIM supplies two types of short-term loans for exporting companies, short-term trade financing and comprehensive export financing. KEXIM provides short-term loans to

Korean exporters who manufacture export goods under export contracts. The loans are provided up to the amount of the bill of exchange or contracted amount less any amount already received. For comprehensive export financing loans, KEXIM supplies short-term loans to any small or medium-sized company, or any large company that is not included in the five largest conglomerates based on their comprehensive export performance. To obtain the loans, companies must report their export performance periodically to KEXIM for review. Comprehensive export financing loans cover from 50 to 90 percent of the company's export performance; however, the maximum loan amount is restricted to 30 billion won. In *Steel Products from Korea,* the Department determined that the GOK's short-term export financing program was countervailable. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea,* 58 FR 37338, 37350 (July 9, 1993) (*Steel Products from Korea*); *see also,* Cold-Rolled Decision Memorandum at ''Short-Term Export Financing.'' No new information, evidence of changed circumstances, or comments from interested parties were presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find this program countervailable. Specifically, we preliminarily determine that the program is specific, pursuant to section 771(5A)(B) of the Act, because receipt of the financing is contingent upon exporting. In addition, we preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(D)(i) of the Act and confers a benefit within the meaning of section 771(E)(ii) of the Act. POCOS, POSCO's affiliate, and Dongbu reported using short-term export financing during the POR.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the ''Subsidies Valuation Information'' section. To calculate the net subsidy rate, we divided the benefit by the f.o.b. value of the respective company's total exports. On this basis, we determine the net subsidy rate to be less than 0.005 percent *ad valorem* for POSCO and less than 0.005 percent *ad valorem* for Dongbu.

II. Program Preliminarily Determined Not To Confer a Benefit During the POR

A. Reserve for Research and Manpower Development Fund Under RSTA Article 9 (Formerly Article 8 of TERCL)

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods companies and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three-percent reserve.

In a prior segment of this proceeding, we determined that this program is specific under section 771(5A)(D)(i) of the Act because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 72 FR 51602, 51607–08 (*2005 Preliminary Results of CORE from Korea*) (unchanged in *2005 CORE from Korea*. We also determined that this program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone and that it provides a benefit under section 771(5)(E) of the Act to the extent that companies in the capital goods industry, which includes steel manufacturers, pay less in taxes than they would absent the program. *Id.* In *2005 Preliminary Results of CORE from Korea,* we continued to find the program countervailable, but found that the companies under investigation only contributed to the reserve at the lower three-percent rate. Therefore, we found no countervailable benefit because the companies contributed at the lower rate, which was available to any Korean company. *Id.* No new information, or evidence of changed circumstances, was presented in this review to warrant reconsideration of the approaches adopted in the *2005 Preliminary Results of CORE from Korea.*

In this administrative review, POSCO and POCOS each reported contributing to the reserve at the three-percent rate during the POR. We continue to find this program to be potentially countervailable. However, as each company contributed to the reserve at the lower three-percent rate, and in light of the Department's approach in *2005 Preliminary Results of CORE from Korea,* we preliminarily determine that no countervailable benefits were conferred under this program during the POR. Dongbu reported that it did not use this program during the POR.

B. Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions From 2002 to 2006

In the *CFS Paper Investigation,* we found that long-term loans issued by such GOK institutions as the KDB constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act to the extent that interest payments on the government loans are lower than what would have been paid on comparable commercial loans. Regarding specificity, we found that long-term loans from the KDB are not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act because (1) they are not based on exportation, (2) they are not contingent on the use of domestic goods over imported goods, and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law. We then examined whether such loans were specific as a matter of fact under section 771(5A)(D)(iii) of the Act, that is, whether the program is *de facto* specific. We found that there was no evidence indicating that these loans were *de facto* specific. *See* CFS Paper Decision Memorandum at ''Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions.''

Dongbu reported receiving long-term loans from a GOK-owned bank after 2001. However, upon calculating the benefit to Dongbu during the POR by applying the benchmark interest rates described above, we preliminarily determine that any potential benefit to Dongbu during this POR is less than 0.005 percent As explained in *CFS from China Investigation* and CFS from China Decision Memorandum, where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total

CVD rate. Hence, we preliminarily find that these loans do not confer a measurable benefit to Dongbu. Accordingly, it is unnecessary to make a finding as to the countervailability of this program for this POR. We will include an examination of this program in a future administrative review. POSCO and POSCOS reported that they did not receive any such lending after 2001.

C. D/A Loans Issued by the KDB and Other Government-Owned Banks

In the *CFS Investigation,* the Department determined that D/A loans from the KDB and other government-owned banks constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determined that such loans confer a benefit, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of D/A loans is contingent upon export performance, we also determined that D/A loans from the KDB and other government-owned banks are specific within the meaning of section 771(5A)(B) of the Act. *See* CFS Paper Decision Memorandum at ''D/A Loans Issued by KDB and Other Government-Owned Banks.''

Dongbu reported receiving short-term D/A financing from a government-owned bank during the POR. To calculate the benefit, we compared the amount of interest paid on the government loans to the amount of interest that would have been paid on comparable commercial short-term financing that could have been obtained on the market. *See* 19 CFR 351.505(a). We calculated the benefit to Dongbu by applying the benchmark interest rates described above. Because loans under this program are discounted (*i.e.*, interest is paid up front at the time the loans are received), the effective rate paid by respondents on their D/A loans is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from respondents' respective company-specific weighted-average interest rates for short-term commercial loans. Because the benchmark interest rate was lower than the interest rates paid by Dongbu, we calculated a net subsidy rate of 0.00 percent *ad valorem* for Dongbu. Therefore, as explained above, it is unnecessary to make a finding as to the countervailability of this program for this POR. POSCO and POCOS did not report any D/A financing from government-owned banks during the POR. We will include an examination of this program in a future administrative review.

D. Document Acceptance (D/A) Financing Provided Under KEXIM's Trade Rediscount Program

Under section 771(5)(B)(iii) of the Act, a subsidy can be found whenever the government ''makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution* * * to a person and a benefit is thereby conferred.'' In the *CFS Investigation*, we determined that KEXIM's trade bill rediscount program constitutes a payment to a funding mechanism because the rediscount ceiling KEXIM provides to banks participating under the program is contingent on banks subsequently lending the funds to exporters. Section 771(5)(B)(iii) of the Act also states that financial contributions from funding mechanisms can be a subsidy only if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by the government. This is the ''government subsidy function'' prong of an indirect financial contribution. Here, the banks are performing a government subsidy function and, therefore, their loans can qualify as subsidies. Therefore, we find that loans from banks under the rediscount program constitute financial contributions within the meaning of section 771(5)(D)(i) of the Act and confer a benefit upon exporters, in accordance with section 771(5)(E)(ii) of the Act, to the extent the amount exporters pay under the program is less than the amount they would pay on comparable commercial loans they could obtain on the market. Because receipt of the loans is contingent upon export performance, we also determine that KEXIM's rediscount program is specific within the meaning of section 771(5A)(B) of the Act. We further found that subsidies on the loans under KEXIM's trade bill rediscount program are tied to sales of subject merchandise to the United States in accordance with 19 CFR 351.525(b)(4) and (5). Accordingly, we limited our benefit calculations to D/A loans issued on sales of subject merchandise to the United States. *See* CFS Paper Decision Memorandum at ''Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program.''

Dongbu reported receiving short-term D/A financing from commercial banks that participated in KEXIM's Trade Rediscount Program during the POR. To calculate the benefit to Dongbu under this program, we compared the amount that Dongbu paid on all of its D/A loans from commercial banks outstanding during the POI to the amount it would pay on comparable commercial short-term financing that it could obtain on the market. *See* 19 CFR 351.505(a). We calculated the benefit to Dongbu by applying the benchmark interest rates described above. Because loans under this program are discounted (*i.e.*, interest is paid up front at the time the loans are received), the effective rate paid by respondents on their D/A loans is a discounted rate. Because the benchmark interest rate was lower than the interest rates paid by Dongbu, we calculated a net subsidy rate of 0.00 percent *ad valorem* for Dongbu. Therefore, as explained above, it is unnecessary to make a finding as to the countervailability of this program for this POR. POSCO and POCOS did not report any D/A financing from commercial banks during the POR. We will include an examination of this program in a future administrative review.

III. Programs Preliminarily Determined To Be Not Used

A. Overseas Resources Development Program

The GOK enacted the Overseas Resource Development Business Act in order to establish the foundation for ensuring the long-term secure supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources. Pursuant to Article 11 of this Act, the Ministry of Commerce, Industry and Energy (MOCIE) annually announces its budget and the eligibility criteria to obtain an overseas resource development (ORD) loan. Any company that meets the eligibility criteria may apply for an ORD loan to MOCIE. The eligibility criteria for receiving an ORD loan are that the loan should be used for surveying, exploration, development, production, engineering services and financing for the development of overseas natural resources. The applicant submits its ORD plans to MOCIE in accordance with the Overseas Resources Development Business Act. MOCIE requests that the Korean Resources Corporation (KORES), a public corporation that is wholly owned by the GOK, conduct an eligibility review, feasibility study and credit evaluation. KORES was established in 1967 and has assumed a direct role in establishing and implementing the GOK's resources development policy, whose purpose is to secure mineral

resources for Korea. In the selection process, KORES uses a loan evaluation committee to select the recipients based on the criteria for the project to develop strategic minerals (*e.g.*, bituminous coal, uranium, iron ore, copper, zinc, nickel, etc.), including co-development with resource-owning countries, mining right of minerals, etc. KORES provides the evaluation result and its recommendation to MOCIE. If the result and recommendation are favorable, MOCIE approves the loan application and provides funds to KORES. KORES then lends the funds to the company for foreign resource development.

During the POR, POSCO reported in its December 20, 2007, Questionnaire Response that it received ORD loans. POSCO's loans were related to an investment in a nickel mine. Nickel is not an input used in the production of subject merchandise. Therefore, we preliminarily determine that POSCO did not use this program with respect to the subject merchandise during the POR. We will continue to examine this program in future reviews.

B. Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41–45)
C. Electricity Discounts Under the Requested Loan Adjustment Program
D. Electricity Discounts Under the Emergency Load Reductions Program
E. Export Industry Facility Loans and Specialty Facility Loans
F. Reserve for Export Loss Under TERCL Article 16
G. Reserve for Overseas Market Development Under TERCL Article 17
H. Reserve for Export Loss Under TERCL Article 22
I. Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment Under TERCL Article 24
J. Tax Credits for Temporary Investments Under TERCL Article 27
K. Tax Credits for Specific Investments Under TERCL Article 71
L. RSTA Article 94: Equipment Investment to Promote Worker's Welfare Under TERCL Article 88
M. Equipment Investment to Promote Worker's Welfare Under TERCL Article 88
N. Emergency Load Reduction Program
O. Local Tax Exemption on Land Outside of a Metropolitan Area
P. Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
Q. Industrial Base Fund
R. Excessive Duty Drawback
S. Private Capital Inducement Act
T. Social Indirect Capital Investment Reserve Funds Under TERCL Article 28
U. Energy-Savings Facilities Investment Reserve Funds Under TERCL Article 29
V. Scrap Reserve Fund
W. Special Depreciation of Assets on Foreign Exchange Earnings
X. Export Insurance Rates Provided by the Korean Export Insurance Corporation
Y. Loans from the National Agricultural Cooperation Federation
Z. Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each of the producer/exporters subject to this administrative review. For the period January 1, 2006, through December 31, 2006, we preliminarily determine the net subsidy rate for POSCO to be 0.09 percent *ad valorem* and for Dongbu to be 0.22 percent *ad valorem*, both of which are *de mimimis*. *See* 19 CFR 351.106(c)(1).

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailable duties all shipments of subject merchandise produced by POSCO and Dongbu, entered, or withdrawn from warehouse, for consumption from January 1, 2006 through December 31, 2006. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise produced by POSCO and Dongbu, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. *See* 19 CFR 351.309(d)(1). Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Pursuant to 19 CFR 351.305(b)(4), representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(i), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These preliminary results of review are issued and published in accordance with sections 7519(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20918 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Protocol for Access to Tissue Specimen Samples from the National Marine Mammal Tissue Bank

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Lawson, (301) 713–2289 or at *Patricia.Lawson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Mammal Tissue Bank (NMMTB) was established in 1992 and provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other substances of interest. The NMMTB collects, processes, and stores tissues from specific indicator species (e.g., Atlantic bottlenose dolphins, Atlantic white sided dolphins, pilot whales, harbor porpoises), animals from mass strandings, animals that have been obtained incidental to commercial fisheries, animals taken for subsistence purposes, biopsies, and animals from unusual mortality events.

The purposes of this collection of information are: (1) To enable NOAA to allow the scientific community the opportunity to request tissue specimen samples from the NMMTB; (2) to enable the Marine Mammal Health and Stranding Response Program (MMHSRP) of NOAA to assemble information on all specimens submitted to the National Biomonitoring Specimen Bank (Bank), which includes the NMMTB.

II. Method of Collection

Reports are required from participants, and methods of submittal include Internet, mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0468.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: Request for tissue sample, 2 hours; specimen submission form, 45 minutes.

Estimated Total Annual Burden Hours: 155.

Estimated Total Annual Cost to Public: $152.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20792 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Report of Whaling Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 10, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ryan Wulff, (301) 713–2276 or *Ryan.Wulff@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Native Americans may conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on, and catch of, whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive, permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA.

The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the IWC, which uses it to

monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone or fax. Information on equipment marks must be made in writing. No form is used.

III. Data

OMB Control Number: 0648–0311.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; State, Local, or Tribal Governments.

Estimated Number of Respondents: 52.

Estimated Time per Response: 30 minutes for reports on whales struck or on recovery of dead whales; 5 minutes for providing the relevant Native American whaling organization with information on the mark and self-identification information; 5 minutes for marking gear; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.

Estimated Total Annual Burden Hours: 48.

Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–20791 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080626787–81157–03]

RIN 0648–ZB97

Availability of Grants Funds for Fiscal Year 2009

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, publishes this notice on the Modeling the Causes of Hypoxia component of the Northern Gulf of Mexico program to provide clarification regarding funding availability.

DATES: The deadline for the receipt of proposals is 3 p.m. EST, October 20, 2008, for both electronic and paper applications.

ADDRESSES: The address for submitting Proposals electronically is: *http://www.grants.gov/*. (Electronic submission is strongly encouraged). Paper submissions should be sent to the attention of, Center for Sponsored Coastal Ocean Research (N/SCI2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8240, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Libby Jewett, (libby.jewett@noaa.gov, 301–713–3338 x 121).

SUPPLEMENTARY INFORMATION: This program was originally solicited in the **Federal Register** on July 11, 2008, as part of the July 2008 NOAA Omnibus solicitation. NOAA is publishing this notice to provide clarification regarding funding availability for the Modeling the Causes of Hypoxia component of the Northern Gulf of Mexico program. Please note that funds for Modeling the Causes of Hypoxia component of the Northern Gulf of Mexico Ecosystems and Hypoxia Assessment program will not exceed $1,000,000.00 per project per year. It is anticipated that only one project will be awarded for this program with project durations of 3 to 5 years. All other requirements for this solicitation remain the same.

Award Notices

The notice of award is signed by the NOAA Grants Officer and is the authorizing document. It is provided by postal mail or electronically through the Grants Online system to the appropriate business office of the recipient organization.

Administrative and National Policy Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying

and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

In conformance with the Uniform Administrative Requirements for Grants and Cooperative Agreements (15 CFR 14.36), any data collected in projects supported by NCCOS/CSCOR should be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to bedetermined by the institution, the NDC, and the Program Officer. Information on NOAA NDCs can be found at *http://www.nesdis.noaa.gov/datainfo.html*. It is the responsibility of the institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by NCCOS/CSCOR are encouraged to be made available to the general research community at no or modest handling charge (to be determined by the institution, Program Officer, and DOC).

Reporting

All performance (i.e. technical progress) reports shall be submitted electronically through the Grants Online system unless the recipient does not have internet access. In that case, performance reports are to be submitted to the NOAA program manager. All financial reports shall be submitted in the same manner.

Agency Contacts

Technical Information: Libby Jewett, Program Manager, 301–713–3338/ext 121, Internet: *libby.jewett@noaa.gov*.

Business Management Information: Laurie Golden, NCCOS/CSCOR Grants Administrator, 301–713–3338/ext 151, Internet: *laurie.golden@noaa.gov*.

Other Information

Administrative Procedure Act

Notice and comment are not required under the Administrative Procedure Act, (5 U.S.C. 553), or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment is not required, a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, (5 U.S.C. 601 et seq).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person is subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) Control Number. This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by the OMB under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046, respectively.

Dated: September 2, 2008.

John Potts,

Chief Financial Officer, National Oceanic and Atmospheric Administration, National Ocean Service.

[FR Doc. E8–20926 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Register Notice Calling for Nominations to Marine Protected Areas Federal Advisory Committee

AGENCY: Marine Protected Areas (MPA), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC)

ACTION: Notice requesting nominations for the Marine Protected Areas Federal Advisory Committee.

SUMMARY: The Department of Commerce is seeking nominations for membership on the Marine Protected Areas Federal Advisory Committee (Advisory Committee). The Advisory Committee was established to advise the Secretary of Commerce and the Secretary of the Interior in implementing Section 4 of Executive Order 13158, specifically on strategies and priorities for developing the national system of marine protected areas (MPAs) and on practical approaches to further enhance and expand protection of new and existing MPAs.

Nominations are sought for highly qualified non-Federal scientists, resource managers, and people representing other interests or organizations involved with or affected by marine conservation including in the Great Lakes. Fifteen members of the Committee have terms that expire October 31, 2009, and nominations are sought to fill these vacancies.

Individuals seeking membership on the Advisory Committee should possess demonstrable expertise in a related field or represent a stakeholder interest affected by MPAs. Nominees also will be evaluated based on the following factors: Marine policy experience, leadership and organization skills, region of country represented, and diversity characteristics. The membership reflects the Department's commitment to attaining balance and diversity. The full text of the Advisory Committee Charter and its current membership can be viewed at the Agency's Web page at *http://mpa.gov.*

DATES: Nominations must be postmarked on or before November 30, 2008.

ADDRESS: Nominations should be sent to: Lauren Wenzel, National Marine Protected Areas Center, NOAA, 1305 East-West Highway, Station 9143, Silver Spring, MD 20910. E-mail: *Lauren.Wenzel@noaa.gov.* E-mail nominations are acceptable.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, National Marine Protected Areas Center, 1305 East-West Highway, Building 4, Station 9143, 301–713 3100 ext. 136, *Lauren.wenzel@noaa.gov.*

SUPPLEMENTARY INFORMATION: In Executive Order 13158, the Department of Commerce and the Department of the Interior were directed to seek the expert advice and recommendations of non-federal scientists, resource managers, and other interested people and organizations through a Marine Protected Areas Federal Advisory Committee. The Advisory Committee was established in June 2003 and includes 30 members.

The Committee meets at least once annually. Committee members serve for one, four year nonrenewable term. Members of the Committee will not be compensated, but may, upon request, be allowed travel and per diem expenses.

Each nomination submission should include the proposed member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Advisory Committee, curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: The nominee's name, address, phone number, fax number, and e-mail address if available.

Dated: September 3, 2008.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. E8–20790 Filed 9–8–08; 8:45 am]

BILLING CODE 3510–08–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0051, Part 39 Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Part 39 Derivatives Clearing Organizations.

DATES: Comments must be submitted on or before November 10, 2008.

ADDRESSES: Comments may be mailed to Lois Gregory, Division of Clearing & Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lois Gregory, (202) 418–5569; FAX: (202) 418–5536; e-mail: *lgregory@cftc.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Registration under the Commodity Exchange Act (OMB Control No. 3038–0051). This is a request for extension of a currently approved information collection.

Abstract: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Part 39 Derivatives Clearing Organizations, OMB control number 3038–0051—Extension.

The information collected pursuant to this rule is used to evaluate compliance with criteria pursuant to which entities apply for and obtain registration as a derivatives clearing organization. The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per responses	Total hours
Part 39	10	10	200	2000

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 3, 2008.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–20871 Filed 9–8–08; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0015, Copies of Crop and Market Information Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on crop and market information.

DATES: Comments must be submitted on or before November 10, 2008.

ADDRESSES: Comments may be mailed to Gary Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, (202) 418–5209; FAX: (202) 418–5527; e-mail: *gmartinaitis@cftc.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Registration under the Commodity Exchange Act (OMB Control No. 3038–0015). This is a request for extension of a currently approved information collection.

Abstract: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or

provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Copies of Crop and Market Information Reports, OMB Control Number 3038–0015—Extension

The information collected pursuant to this rule, 17 CFR 140, is in the public interest and is necessary for market surveillance.

Burden Statement:

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
140	15	15	0.16	2.5

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 3, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–20872 Filed 9–8–08; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0021, Regulations Governing Bankruptcies of Commodity Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Regulations Governing Bankruptcies of Commodity Brokers.

DATES: Comments must be submitted on or before November 10, 2008.

ADDRESSES: Comments may be mailed to William Penner, Division of Clearing & Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: William Penner, (202) 418–5407; FAX: (202) 418–5536; e-mail: *wpenner@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Regulations Governing Bankruptcies of Commodity Brokers, OMB control number 3038–0021—Extension.

The information collected pursuant to this rule is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity broker.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
Part 190	301	4951	0.20	248

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 3, 2008.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–20876 Filed 9–8–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Allcomp, Incorporated, a California corporation, having a place of business at 209 Puente Avenue, City of Industry, California 91746–2304 an exclusive license in any right, title and interest the Air Force has in:

U.S. Patent No. 6,309,703, issued 30 October 2001, entitled ''Carbon and Ceramic Matrix Composites Fabricated by a Rapid Low-Cost Process Incorporating In-Situ Polymerization of Wetting Monomers,'' by Phillip G. Wapner, Wesley P. Hoffman and Steven Jones.

DATES: A license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice.

FOR FURTHER INFORMATION: Written objection should be sent to: Air Force Material Command Law Office, AFMCLO/JAZ, Building 11, room D18, 2240 B Street, Wright Patterson AFB, OH 45433–7109. Telephone: (937) 255–2838; Facsimile (937) 255–7333.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–20880 Filed 9–8–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Office of Management; Notice of Membership of the Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ends September 30, 2008. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education for 2008 is composed of career senior executives, noncareer senior executives, and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education for the specified SES performance cycle: Chris Marston (Chair), Cheryl Oldham, Philip Link, Thomas Skelly, Ricky Takai, Wendy Tada, Paul Riddle, and Danny Harris. Alternate members are: JoAnn Ryan and Larry Kean.

FOR FURTHER INFORMATION CONTACT: Mary Beth Pultz, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E124, LBJ, Washington, DC 20202–4573. Telephone: (202) 401–0853.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 4, 2008.

Margaret Spellings,

Secretary of Education.

[FR Doc. E8–20903 Filed 9–8–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services (OSERS), Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovation Research Program (SBIR)—Phase I; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

DATES:

Applications Available: September 9, 2008.

Deadline for Transmittal of Applications: November 10, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of the U.S. Department of Education (Department) supported research results, and improve the return on investment from federally funded research for economic and social benefits to the Nation.

Note: This program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR Doc 8166), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

NIDRR Supports Manufacturing-Related Innovation (Executive Order 13329): Executive Order 13329 states that continued technological innovation is critical to a strong manufacturing sector in the United States economy and ensures that Federal agencies assist the private sector in its manufacturing innovation efforts. The Department's SBIR program encourages innovative research and development (R&D) projects that are manufacturing-related, as defined by Executive Order 13329. Manufacturing-related R&D encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems. The projects supported under the Department's SBIR program encompass a range of manufacturing-related R&D, including projects leading to the manufacture of such items as artificial intelligence or information technology devices, software, and systems. For more information on Executive Order 13329, please visit the following Web site: *http://www.sba.gov/sbir/execorder.html* or contact Lynn Medley at: *lynn.medley@ed.gov.*

Background

The Small Business Reauthorization Act of 2000 (Act) was enacted on December 21, 2000. The Act requires certain agencies, including the Department, to establish SBIR programs by reserving a statutory percentage of their extramural R&D budgets to be awarded to small business concerns through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I projects determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. An application for Phase I should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept. Scientific or technical feasibility is a prerequisite to further support by the Department in Phase II.

Phase II: Phase II projects expand on the results of and further pursue the development of Phase I projects. Phase II is the principal R/R&D effort of the SBIR program. Applications for Phase II projects must be more comprehensive than applications for Phase I projects; Phase II applications must outline the proposed effort in detail, including the commercial potential of projects or processes developed or researched during the Phase I project. Phase II applicants must be Phase I grantees with approaches that appear sufficiently promising as a result of their efforts in Phase I. Phase II awards are for periods of up to two years in amounts up to a maximum total of $500,000 over a period of two years.

Phase III: In Phase III, the small business grantee must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities and their families. (See 29 U.S.C. 762.) Activities may include: conducting manufacturing-related R&D that encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems; exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities; and improving the quality and utility of disability and rehabilitation research.

Priorities: Under this competition we are particularly interested in applications that address one of the following priorities.

Invitational Priorities: For FY 2009 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Each of the following priorities relate to innovative research utilizing new technologies to address the needs of individuals with disabilities and their families. Applicants who choose to respond to one of the invitational priorities must propose projects whose activities contribute to one of the following outcomes:

(1) Increased independence of individuals with disabilities in the workplace, recreational settings, or educational settings through the development of technology to support access and promote integration of individuals with disabilities.

(2) Enhanced sensory or motor function of individuals with disabilities through the development of technology to support improved functional capacity.

(3) Enhanced workforce participation through the development of technology to support access to employment, promote sustained employment, and promote employment advancement for individuals with disabilities.

(4) Enhanced community participation and living for individuals with disabilities through the development of accessible information technology including Web access technology, software, and other systems and devices that promote access to information in educational, employment, and community settings, and voting technology that improves access for individuals with disabilities.

(5) Improved interventions and increased use of health-care resources through the development of technology to support independent access to health-care services in the community for individuals with disabilities.

Applicants should describe the approaches they expect to use to collect empirical evidence demonstrating the effectiveness of the technology they are proposing. This empirical evidence should facilitate the assessment of the

efficacy and usefulness of the technology.

Note: NIDRR encourages applicants to adhere to universal design principles and guidelines. Universal design is defined as ''the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'' (The Center for Universal Design, 1997). Accessible design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products. (For more information see *http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*).

Reference: The Center for Universal Design. (1997). The Principles of Universal Design, Version 2.0. Raleigh, NC: North Carolina State University. Web: *www.design.ncsu.edu*.

Program Authority: The Small Business Act, Pub. L. 85–536, as amended (15 U.S.C. 631 and 638), and title II of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760, *et seq.*).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $105,700,000 for the National Institute on Disability and Rehabilitation Research for FY 2009, of which we intend to use an estimated $1,125,000 for new Phase I awards under the SBIR program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, minus prior commitments for Phase II continuation awards.

Estimated Range of Awards: $70,000–$75,000.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of up to six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Maximum Project Period: We will reject any application that proposes a project period that exceeds a single budget period of up to six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Entities that are, at the time of award, small business concerns as defined by the Small Business Administration (SBA). This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee. For Phase I projects, at least two-thirds of the research and/or analytic activities must be performed by the proposing small business concern. Furthermore, the total of all consultant fees, facility leases or usage fees, and other subcontracts or purchase agreements may not exceed one-third of the total funding award.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.* , Braille, large print, audiotape, or computer diskette) by contacting the person listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable, and required forms, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Single space all text in the application narrative. Single space titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the coversheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letters of support; related application(s) or award(s); or documentation of multiple Phase II awards, if applicable. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resume of staff; and other related materials, if applicable.

3. *Content Restrictions:* If an applicant chooses to respond to more than one invitational priority, the applicant must submit a separate application for each priority. There is no limitation on the number of different applications that an applicant may submit under this competition. An applicant may submit separate applications on different priorities, or different applications on the same priority. However, an applicant may address only one priority in an application.

The Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics. No more than one designation should be selected for each application.

4. *Submission Dates and Times:*

Applications Available: September 9, 2008.

Deadline for Transmittal of Applications: November 10, 2008.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

7. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide *Grants.gov* Apply site. The SBIR Program, CFDA Number 84.133S–1, is included in this project. We request your participation in *Grants.gov*.

If you choose to submit your application electronically, you must use the Governmentwide *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the SBIR Program at: *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.* , search for 84.133, not 84.133S).

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via *Grants.gov*, you must complete all steps in the *Grants.gov* registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the *Grants.gov* 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via *Grants.gov*. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.133S–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 35 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual

performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field; and
- The number of new or improved assistive and universally designed technologies, products, and devices developed by grantees that are deemed to improve rehabilitation services and outcomes, enhance opportunities for participation by individuals with disabilities, and are successfully transferred to industry or other private entities for potential commercialization.

VII. Agency Contact

For Further Information Contact: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 6027, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

If you use a TDD, call the TDD number at (202) 205–4475.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.* , Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 4, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–20906 Filed 9–8–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Department of Energy, Office of Electricity Delivery and Energy Reliability.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy, Office of Electricity Delivery and Energy Reliability established the Electricity Advisory Committee on January 29, 2008 for a two-year period. The Committee was created to provide advice to the Assistant Secretary for Electricity Delivery and Energy Reliability, on long range planning and priorities for the modernization of the Nation's electricity delivery infrastructure. The Electricity Advisory Committee will hold a two-day meeting in Washington DC to discuss drafts of reports and electricity policy recommendations that the Committee may later submit to the Department of Energy.

DATES: September 25, 2008, 3:30 p.m. to 6 p.m. September 26, 2008, 8:30 a.m. to 2 p.m.

Location: September 25, 2008, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. September 26, 2008, L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024, Ballrooms C and D.

FOR FURTHER INFORMATION CONTACT: David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Tentative Agenda: Discuss drafts of reports and electricity policy recommendations.

Public Participation: The meeting will be open to the public. Members of the public who wish to speak or submit comments should contact David Meyer at *david.meyer@hq.doe.gov*, or (202) 586–1411. Copies of draft reports, the agenda for the meeting, and additional information are available at the EAC Web site: *http://www.oe.energy.gov/eac_meetings.htm.*

Minutes: The minutes from this meeting will also be posted to this website within 45 days following the meeting.

Issued in Washington, DC on September 4, 2008.

Rachel Samuel,

Committee Management Officer.

[FR Doc. E8–20848 Filed 9–8–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: September 18, 2008 at 1 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Acting Assistant Manager, Office of Commercialization and & Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with

the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Notes: The notes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org*.

Issued at Washington, DC, on September 4, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–20847 Filed 9–8–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–84–000]

Arkansas Electric Energy Consumers, Inc., Complainant, v. Entergy Corporation, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Louisiana, Inc., Entergy Louisiana, L.L.C., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., Respondents; Notice of Complaint

August 25, 2008.

Take notice that on August 25, 2008, Arkansas Electric Energy Consumers, Inc. (Complainant) pursuant to sections 206 and 212 of the Rules and Practice and Procedure, 18 CFR 385.206 and 385.212 and sections 205 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), filed a formal complaint against Entergy Corporation; Entergy Services, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, Inc.; Entergy Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc. (Respondents), requesting that the Commission review whether Entergy Corporation's decision to acquire a combined cycle gas turbine generating plant located near Sterlington, Louisiana, called the Ouachita Plant violates the Entergy System Agreement and is otherwise just and reasonable as required by the Federal Power Act. The Complainant also requests the Commission to determine that the Ouachita Plant is an Entergy Arkansas resource rather than an Entergy system resource.

The Complainant states that a copy of the complaint has been served on the contacts for the Respondents listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 15, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20783 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–123]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 2, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2146–123.

c. *Date filed:* July 24, 2008.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River, in Elmore County, Alabama and Floyd County, Georgia. The proposed non-project use is on the project's Weiss Lake in Cherokee County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Keith Bryant, 600 18th Street North, Birmingham, AL 35203–8180, (205) 257–1403.

i. *FERC Contact:* Hillary Berlin at (202) 502–8915, or e-mail *Hillary.Berlin@FERC.gov*.

j. *Deadline for filing comments and/or motions:* October 3, 2008.

All documents (original and eight copies) should be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Application:* Alabama Power Co. requests permission to permit Mr. Shad Ellis to develop an addition to the Three Mile Resort, an existing recreational campground, at the project's Weiss Lake. This addition would consist of 71 camper lots with utilities, 17 stationary finger piers, 3 common-use lots, 26 boat slips (2 docks, with 14 and 12 slips each and a 10 ft. by 30 ft. platform), a 20 ft. by 30 ft. platform pier, a boat ramp, and a picnic pavilion.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in

the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', 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.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. Please include the project number (P–2146–123) on any comments or motions filed.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20805 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6902–072]

City of Martinsville, WV, American Municipal Power-Ohio, Inc.; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

September 3, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 6902–072.

c. *Date Filed:* August 19, 2008.

d. *Applicants:* City of Martinsville, WV (transferor); American Municipal Power-Ohio, Inc. (transferee).

e. *Name and Location of Project:* The Willow Island Lock and Dam Project is located on the Ohio River in Pleasants County, West Virginia and Washington County, Ohio.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Francis E. Francis, City of Martinsville, WV, C/O Spiegel & McDiarmid, 1333 New Hampshire Avenue, Washington, DC 20036.

For the transferee: Michael A. Swiger, American Municipal Power-Ohio, Inc., C/O Van Ness Feldman, 1050 Thomas Jefferson Street, NW., Washington, DC 20007–3877.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* September 15, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in 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 documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Willow Island Lock and Dam Project from City of Martinsville, WV to American Municipal Power-Ohio, Inc.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number (P–9985) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *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 Applicants. 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 Applicants' representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20866 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2392–024]

Dalton Hydro LLC, Ampersand Gilman Hydro LP; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

September 3, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2392–024.

c. *Date Filed:* July 25, 2008 and supplemented on July 31, 2008.

d. *Applicants:* Dalton Hydro, LLC (transferor), Ampersand Gilman Hydro LP (transferee).

e. *Name and Location of Project:* The Gilman Project is located on the Connecticut River in Essex County, Vermont and Coos County, New Hampshire.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Steve Harmsen, City of Martinsville, WV, C/O West American Finance Company, 26 North State Street, Salt Lake City, UT.

For the transferee: A.J. Goulding, Ampersand Gilman Hydro LP, C/O London Economics International LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111.

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* September 30, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in 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 documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Gilman Project from Dalton Hydro, LLC to Ampersand Gilman Hydro LP.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number (P–2392) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *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 Applicants. 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 Applicants' representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20865 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–13235–000]

Middlebury Electric, LLC; Notice of Application for Preliminary Permit Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

September 2, 2008.

On June 5, 2008, Middlebury Electric, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of Middlebury Upper Hydroelectric Project. The proposed project would be located on the Otter Creek in Addison County, Vermont. The properties that would be associated with the proposed Middlebury Upper Hydroelectric Project are owned by the applicant.

The proposed project using the existing properties, including the sluiceway, intake infrastructure, and flume, would consist of: (1) A proposed powerhouse, containing a single 400 kW generating unit; (2) a proposed penstock approximately 120 feet long, 7.5 feet wide; (3) a proposed new transmission line around 500 feet long; and (4) appurtenant facilities. The proposed

project would have an average annual generation of approximately 2.8 gigawatt-hours, to be utilized by Middlebury College.

Applicant Contact: Dr. Anders Holm, 1330 Exchange Street, Middlebury, VT 05445, (802) 233–9606.

FERC Contact: Jake Tung, (202) 502–8757.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13235) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20804 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12498–003]

Ocean Renewable Power Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 3, 2008.

On March 13, 2008, Ocean Renewable Power Company, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ft. Lauderdale OCGen Power Project, located on the Gulf Stream in the Atlantic Ocean, near Broward County, Florida. No federal land or facilities would be used. The project uses no dam or impoundment.

The proposed project would consist of: (1) 500 proposed OCGen module units, with a total installed capacity of 150-megawatts, (2) a proposed 12-mile-long, 33-kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an annual generation of 500-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Paul Wells, Chairman & Founder, Ocean Renewable Power Company, LLC, 2430 NE 199th Street, N. Miami Beach, FL 33180, phone (305) 936–1515.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–12498–003) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20860 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12500–003]

Ocean Renewable Power Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 3, 2008.

On March 13, 2008, Ocean Renewable Power Company, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the West Palm Beach OCGen Power Project, located in the Gulf Stream in the Atlantic Ocean off the coast of West Palm Beach, in Palm Beach County, Florida. No federal land or facilities would be used. The project uses no dam or impoundment.

The proposed project would consist of: (1) 500 proposed OCGen module units, with a total installed capacity of 150-megawatts, (2) a proposed 12-mile-long, 33-kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an annual generation of 500-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Paul Wells, Chairman & Founder, Ocean Renewable Power Company, LLC, 2430 NE 199th Street, N. Miami Beach, FL 33180, phone (305) 936–1515.

FERC Contact: Patricia W. Gillis (202) 502–8735.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–12500–003) in the docket number

field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20861 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2493–084]

Puget Sound Energy, Inc.; Notice of Amendment of Application for an Amendment of License Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

September 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Application for Amendment of License.

b. *Project No.:* 2493–084.

c. *Date Filed:* June 2, 2008, and supplemented on August 22, 2008.

d. *Applicant:* Puget Sound Energy, Inc. (Puget).

e. *Name of Project:* Snoqualmie Falls Hydroelectric Project.

f. *Location:* The project is located on the Snoqualmie River, in the City of Snoqualmie, King County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Joel Molander, Puget Sound Energy, Inc., M/S PSE–09S, P.O. Box 90868, Bellevue, Washington 98009–0868; telephone (425) 462–3603.

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and e-mail: *linda.stewart@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* On February 25, 2008, the Commission issued a Notice of Application for Amendment of License for the Snoqualmie Falls Project. The notice described Puget's request to amend the project license, filed on December 6, 2007. On June 2, 2008 and August 22, 2008, Puget filed additional information that included a proposal for the remediation of contaminated soils at the project. The remediation work would occur in conjunction with other project modifications proposed in the December 6, 2007 application for amendment of the project license.

l. Please note that the underlying license is currently before the U.S. Court of Appeals for the Ninth Circuit. Any final Commission action would have to be by leave of the court.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' '' TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

r. *e-Filing:* Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20801 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12551–001]

Salvatore and Michelle Shifrin; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

September 3, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 12551–001.

c. *Date filed:* January 25, 2008.

d. *Applicant:* Salvatore and Michelle Shifrin.

e. *Name of Project:* Mansfield Hollow Hydro Power Project.

f. *Location:* On the Natchaug River in Tolland County, Connecticut. The project would occupy United States land managed by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705 and 2708.

h. *Applicant Contact:* Salvatore Shifrin, 78 Bricktop Road, Windham, CT 06280, (860) 423–7709.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice 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.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted and is now ready for environmental analysis at this time.

l. *Description of Project:* The Mansfield Hollow Hydro Power Project would consist of: (1) The existing 80-foot-long, 10-foot-high Kirby Mill Dam; (2) the existing 1.6-acre reservoir; (3) the existing headgate structure; (4) the existing 12-foot-wide, 8-foot-high, 330-foot-long head race channel; (5) a new powerhouse containing five generating units with a total installed capacity of 500 kilowatts; (6) the existing 5-foot-wide, 7-foot-high, 100-foot-long conduit and 75-foot-long open tailrace; and (7) appurtenant facilities. The project would have an average annual generation of about 2,500 megawatt-hours.

In addition to a new powerhouse, project restoration would consist of: (1) A new 12-foot-wide, 8-foot-high, 330-foot-long head race channel; (2) a new 20-foot-wide, 8-foot-high, 20-foot-long box culvert connected to a new 25-foot-wide, 4-foot-high, 153-foot-long open channel tail race; and (3) a new 480–V/23–kV, 275-foot-long underground transmission cable.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the exemption application. The application will be processed according to the schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Notice of the availability of the EA	February 2009

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20862 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 29, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–119–000.

Applicants: Tiverton Power Inc., Rumford Power Inc.

Description: Application of Rumford Power Inc. and Tiverton Power Inc. under section 203 of FPA to Transfer Control.

Filed Date: 08/20/2008.

Accession Number: 20080820–5114.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1356–001.

Applicants: Maine Yankee Atomic Power Company.

Description: Maine Yankee Atomic Power Co. submits an amendment to the 8/1/08 filing of Third Revised Rate Schedule FERC No.1.

Filed Date: 08/27/2008.
Accession Number: 20080828–0104.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1445–000.
Applicants: American Electric Power Service Corporate.
Description: AEP Operating Companies submits an eighth revision to the Interconnection and Local Delivery Agreement between AEP and the Blue Ridge Power Authority.
Filed Date: 08/26/2008.
Accession Number: 20080828–0106.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1446–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits revisions to its FERC Electric Tariff, Seventh Revised Volume 11.
Filed Date: 08/26/2008.
Accession Number: 20080828–0107.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1447–000.
Applicants: NaturEner Glacier Wind Energy 1, LLC.
Description: NaturEner Glacier Wind Energy 1, LLC submits an executed Coordinated Operating Agreement.
Filed Date: 08/26/2008.
Accession Number: 20080828–0105.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1448–000.
Applicants: Southern Company Services, Inc.
Description: Southern Companies submits a table showing each of the applicable Southern Companies 2007 actual accruals for PBOP costs and projected accruals for 2008, and independent actuarial assumptions and serve as a basis for the 2008 projections under ER08–1448.
Filed Date: 08/27/2008.
Accession Number: 20080828–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1449–000.
Applicants: Tieton Hydropower, LLC.
Description: Tieton Hydropower, LLC submits its non-confirming Initial Transmission Rate Schedule FERC No. 1.
Filed Date: 08/27/2008.
Accession Number: 20080828–0103.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1450–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits an executed Large Generator Interconnection Agreement between NorthWestern and NaturEner Glacier Wind Energy 1, LLC.
Filed Date: 08/26/2008.
Accession Number: 20080828–0108.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–59–000.
Applicants: AEP Generating Company.
Description: Application of AEP Generating Company under section 204 of the Federal Power Act for Authorization to Issue Securities.
Filed Date: 08/21/2008.
Accession Number: 20080821–5032.
Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–32–002.
Applicants: PJM Interconnection, LLC.
Description: Supplemental Information of PJM Interconnection L.L.C. re the second compliance filing to PJM's transmission planning process to reflect further revisions to Schedule 6.
Filed Date: 08/13/2008.
Accession Number: 20080813–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: OA08–58–002.
Applicants: ISO New England Inc.
Description: ISO New England Inc. *et al.* submits proposed revisions to Appendix 1 to Attachment K of its Open Access Transmission Tariff etc, to comply with FERC's order issued on 5/15/08 under OA08–58.
Filed Date: 08/13/2008.
Accession Number: 20080828–0211.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 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.

Kimberly D. Bose,
Secretary.
[FR Doc. E8–20734 Filed 9–8–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 4, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP02–534–008.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Original Sheet 9 to FERC Gas Tariff, Original Volume 1, to be effective 7/1/08.
Filed Date: 09/02/2008.
Accession Number: 20080903–0203.
Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: RP07–443–004.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits Fifth Revised Sheet 68 et al to FERC Gas

Tariff, First Revised Volume 1, to be effective 9/1/08.

Filed Date: 09/02/2008.

Accession Number: 20080903–0044.

Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: RP08–257–001.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Co, LLC submits Sub Sixth Revised Sheet 11 et al to FERC Gas Tariff, Original Volume 1, to be effective 9/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–561–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Transmission Company LLC submits Eleventh Revised Sheet 7 et al to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–562–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co submits 77 Revised Sheet 50 et al to FERC Gas Tariff, Fifth Revised Volume 1.

Filed Date: 08/29/2008.

Accession Number: 20080903–0002.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–563–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company LLC submits Twelfth Revised Sheet 7 et al to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–564–000.

Applicants: Petal Gas Storage L.L.C.

Description: Petal Gas Storage LLC submits Sixth Revised Sheet 4A to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0004.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–565–000.

Applicants: KO Transmission Company.

Description: KO Transmission Co submits Twenty-fourth Revised Sheet 10 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–566–000.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits Fourteenth Revised Sheet 4D to FERC Gas Tariff, Fourth Revised Volume 1A, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0006.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–567–000.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline LP submits Sixth Revised Sheet 10 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0008.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–568–000.

Applicants: TransColorado Gas Transmission Company L.

Description: TransColorado Gas Transmission Co LLC submits Second Revised Sheet 20 et al to FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0007.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–569–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co submits Thirty-Seventh Revised Sheet 20 et al. to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0009.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–570–000.

Applicants: WestGas InterState, Inc.

Description: WestGas InterState, Inc submits Tenth Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0011.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–571–000.

Applicants: Ozark Gas Transmission, LLC.

Description: Ozark Gas Transmission, LLC submits Eighth Revised Sheet 13 to FERC Gas Tariff, Original Volume 1.

Filed Date: 08/29/2008.

Accession Number: 20080903–0010.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–572–000.

Applicants: Stingray Pipeline Company, LLC.

Description: Stingray Pipeline Co, LLC submits Nineteenth Revised Sheet 5 to FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0012.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–573–000.

Applicants: Portland Natural Gas Transmission System.

Description: Portland Natural Gas Transmission System submits Fourth Revised Sheet 100 et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0013.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–574–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits Third Revised Sheet 603A to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0014.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–575–000.

Applicants: Gulf States Transmission Corporation.

Description: Gulf States Transmission Corporation submits Fifth Revised Sheet No. 5 et al. to FERC Gas Tariff, Original Volume No. 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0015.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–576–000.

Applicants: Black Marlin Pipeline Company.

Description: Black Marlin Pipeline Co submits Seventeenth Revised Sheet 4 to FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0017.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–577–000.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits Fourteenth Revised Sheet 20 to FERC Gas Tariff,

Original Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0016.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–578–000.

Applicants: Energy West Development, Inc.

Description: Energy West Development, Inc submits Third Revised Sheet 3 to FERC Gas Tariff, Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0018.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–579–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Panhandle Eastern Pipe Line Co, LP submits Nineteenth Revised Sheet 4 et al. to FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0019.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–580–000.

Applicants: Southwest Gas Storage Company.

Description: Southwest Gas Storage Co submits Twenty-Third Revised Sheet No. 5 to FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0020.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–595–000.

Applicants: Pine Needle LNG Company, LLC.

Description: Pine Needle LNG Co, LLC submits Sixteenth Revised Sheet 4 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0039.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008

Docket Numbers: RP08–596–000.

Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits Second Revised Sheet 14 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–597–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits Seventh Revised Sheet 1 et al to FERC Gas Tariff, Original Volume 1, to be effective 9/30/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0037.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–598–000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Co submits Sixty-Ninth Sheet 14 et al to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0036.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–599–000.

Applicants: Southern LNG Inc.

Description: Southern LNG Inc submits Twenty-First Sheet 5 et al to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 08/29/2008.

Accession Number: 20080903–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008

Docket Numbers: RP08–600–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Fifty-Second Revised Sheet 11A to FERC Gas Tariff, First Revised Volume 1 that reflects revised reimbursement percentages applicable to Rate Schedule CS–1 etc.

Filed Date: 08/29/2008.

Accession Number: 20080903–0041.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Docket Numbers: RP08–601–000.

Applicants: Sabine Pipe Line LLC.

Description: Sabine Pipe Line LLC submits Eleventh Revised Sheet 20 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.

Filed Date: 09/02/2008.

Accession Number: 20080903–0202.

Comment Date: 5 p.m. Eastern Time on Monday, September 15, 2008.

Docket Numbers: RP08–602–000.

Applicants: Sabine Pipe Line LLC.

Description: Sabine Pipe Line LLC submits Third Revised Sheet 245 to FERC Gas Tariff, Original Volume 1, to be effective 11/1/08.

Filed Date: 09/02/2008.

Accession Number: 20080903–0201.

Comment Date: 5 p.m. Eastern Time on Monday, September 15, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–20850 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 2, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–120–000.

Applicants: Noble Thumb Windpark, LLC; Noble Thumb Windpark I, LLC;

John Deere Renewables, LLC; Michigan Thumb Windpark, LLC.

Description: Noble Thumb Windpark, LLC et al. submits a joint application for authorization for disposition of jurisdictional facilities and request for expedited action.

Filed Date: 08/27/2008.

Accession Number: 20080829–0081.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–91–000.

Applicants: Noble Great Plains Windpark, LLC.

Description: Self-Certification Notice of Exempt Wholesale Generator Status of Noble Great Plains Windpark, LLC under EG08–91.

Filed Date: 08/27/2008.

Accession Number: 20080827–5039.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: EG08–92–000.

Applicants: Ashtabula Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Ashtabula Wind, LLC in EG08–92.

Filed Date: 08/27/2008.

Accession Number: 20080827–5044.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2117–006; ER00–2118–006; ER00–3751–006; ER02–24–011; ER01–389–009; ER92–521–003; ER07–400–002; ER08–1236–002; ER93–493–018; ER02–26–010; ER02–25–009.

Applicants: ANP Bellingham Energy Company, LLC; ANP Blackstone Energy Company, LLC; ANP Funding I, L.L.C.; Armstrong Energy LLLP; Calumet Energy Team, LLC; Hartwell Energy Limited Partnership; IPA Marketing, Inc.; IPA Trading, LLC; Milford Power Limited Partnership; Pleasants Energy, LLC; Troy Energy, LLC.

Description: IPA Entities submits notice of change in status with regard to the characteristics previously relied upon by the Commission in granting the IPA Entities market-based rate authority under ER00–2117 et al.

Filed Date: 08/27/2008.

Accession Number: 20080829–0098.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER05–717–008; ER05–721–008; ER04–374–008; ER99–2341–010; ER06–230–005; ER06–1334–005; ER07–277–003; ER07–810–002; ER08–237–002.

Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invenergy TN LLC; Hardee Power Partners Limited; Wolverine Creek Energy LLC; Spindle Hill Energy LLC; Invenergy Cannon Falls LLC; Grays Harbor Energy LLC; Forward Energy LLC.

Description: Spring Canyon Energy LLC et al. submits notification of change of status under market-based rate authority under ER05–717 et al.

Filed Date: 08/28/2008.

Accession Number: 20080829–0114.

Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER06–739–017; ER06–738–017; ER03–983–015; ER07–501–015; ER02–537–019; ER08–649–009.

Applicants: East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Company LLC; Birchwood Power Partners, L.P.; Shady Hills Power Company, L.L.C.; EFS Parlin Holdings, LLC.

Description: Notice of Non-Material Change in Status of East Coast Power Linden Holding, LLC, et al. under ER06–739, et al.

Filed Date: 08/28/2008.

Accession Number: 20080828–5129.

Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER07–530–000.

Applicants: Red Shield Environmental, L.L.C.

Description: Withdrawal of Application and Notice of Tariff Cancellation of Red Shield Environmental, L.L.C. under ER07–530.

Filed Date: 08/28/2008.

Accession Number: 20080828–5126.

Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER07–869–004; ER06–615–030; ER07–475–005.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits the instant filing in compliance with the following the Commission's Order ''Order Conditionally Accepting Tariff Provisions, etc.''

Filed Date: 08/26/2008.

Accession Number: 20080829–0095.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 16, 2008.

Docket Numbers: ER08–1039–001.

Applicants: DPL Energy, LLC.

Description: DPL Energy, LLC submits response to the 7/29/08 request for additional information from the FERC Staff, which sets forth the cost-based revenue requirement for DPL Energy to provide Reactive Supply and Voltage Control Generation, etc.

Filed Date: 08/28/2008.

Accession Number: 20080902–0170.

Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1044–001; ER08–1052–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to Transmission Service Agreements for firm point-to-point service under the PJM Open Access Transmission Tariff as executed between PJM and (i) Orion Power Midwest , LP et al under ER08–1044.

Filed Date: 08/27/2008.

Accession Number: 20080829–0097.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1059–001; ER06–615–031; ER07–1257–009; ER08–519–003.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Fifth Revised Sheet 264 et al to FERC Electric Tariff, Third Replacement Volume 1 in compliance with the Commission's 7/29/08 Order, effective 7/30/08.

Filed Date: 08/28/2008.

Accession Number: 20080829–0120.

Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1354–002.

Applicants: Occidental Chemical Corporation.

Description: Occidental Chemical Corp requests a 10-day notice period for their amendment to its application for order authorizing market-based rates etc.

Filed Date: 08/28/2008.

Accession Number: 20080829–0119.

Comment Date: 5 p.m. Eastern Time on Monday, September 8, 2008.

Docket Numbers: ER08–1451–000.

Applicants: Northwestern Corporation.

Description: Northwestern Corporation et al submits revised tariff sheets to existing non-conforming long-term service agreements on file with the Commission to permit Northwestern to request and obtain from Avista up to an additional 10 MW etc under ER08–1451.

Filed Date: 08/27/2008.

Accession Number: 20080829–0096.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: ER08–1452–000.

Applicants: Wisconsin River Power Company.

Description: Wisconsin River Power Company submits a New Construction Power Purchase Contract by and among Wisconsin River et al Original Rate Schedule FERC 5.

Filed Date: 08/28/2008.
Accession Number: 20080829–0094.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1453–000.
Applicants: Georgia Energy Cooperative.
Description: Georgia Energy Cooperative advise FERC that they are no longer a ''public utility'' subject to the Commission's jurisdiction as a result of the amendments to Section 201(c) of the Federal power Act etc.
Filed Date: 08/28/2008.
Accession Number: 20080829–0118.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1454–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits an Interconnection Agreement between Westar and the City of Eudora, Kansas dated 7/28/08.
Filed Date: 08/28/2008.
Accession Number: 20080829–0117.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1455–000.
Applicants: Northeast Utilities Service Company.
Description: The Connecticut and Power Company submits the executed Preliminary Design Services Agreement for Watertown Renewable Power, LLC by and between CL&P and Watertown.
Filed Date: 08/28/2008.
Accession Number: 20080829–0116.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1456–000.
Applicants: Xcel Energy Services Inc.
Description: Northern States Power Co et al submits a Notice of Termination of the Non-Firm Energy Sales Agreement with Wisconsin Public Power, Incorporated System.
Filed Date: 08/28/2008.
Accession Number: 20080829–0115.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1457–000.
Applicants: PPL Electric Utilities Corporation.
Description: PPL Electric Utilities submits revised tariff sheets to the PJM Interconnection, LLC Open Access Transmission Tariff.
Filed Date: 08/28/2008.
Accession Number: 20080829–0122.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1458–000.
Applicants: New England Power Company.
Description: New England Power Co requests the FERC's acceptance of modified Appendices A through H to the Large Generator Interconnection Agreement with TransCanada Hydro Northeast, Inc etc.
Filed Date: 08/28/2008.
Accession Number: 20080829–0121.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1459–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Company submits First Supplement to Distribution Service Agreement with Mirant Canal, LLC regarding wheeling out service which NSTAR provides for Mirants's Oak Bluffs etc.
Filed Date: 08/28/2008.
Accession Number: 20080902–0165.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1460–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits a non-conforming service agreement for network integration transmission service pursuant to the APS Open Access Transmission Tariff.
Filed Date: 08/28/2008.
Accession Number: 20080902–0166.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1461–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff to amend Schedule 31, Reliability Coordination Service Cost Recovery Adder.
Filed Date: 08/28/2008.
Accession Number: 20080902–0167.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1462–000.
Applicants: PPL EnergyPlus, LLC.
Description: PPL EnergyPlus, LLC submits its proposed FERC Electric Tariff, Original Volume 1 and supporting cost data under which it specifies the revenue requirement for providing cost-based Reactive Supply and Voltage Control etc.
Filed Date: 08/28/2008.
Accession Number: 20080902–0168.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER08–1463–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits Annual Informational Filing showing the formula rate and formula rate revenue requirements in effect under Schedules 7, 8, and 9 of the OATT for the period beginning 10/1/08 and ending 9/30/08.
Filed Date: 08/28/2008.
Accession Number: 20080902–0169.
Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1-017; RR07–4–004.
Applicants: North American Electric Reliability Corp.
Description: Motion of the North American Electric Reliability Corporation to File Corrected Attachment 7 to Compliance Filing in Response to March 21 2008 Order.
Filed Date: 08/28/2008.
Accession Number: 20080828–5055.
Comment Date: 5 p.m. Eastern Time on Thursday, September 11, 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. E8–20854 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–560–000]

G4 Energy, LLC, Complainant, v. Cheyenne Plains Gas Company, LLC, Respondent; Notice of Complaint

September 3, 2008.

Take notice that on August 29, 2008, pursuant to section 206 of the Rules of Practice and Procedure, 18 CFR 385.206 and section 5 of the Natural Gas Act, 15 U.S.C. 717d, G4 Energy, LLC (Complainant) filed a formal complaint requesting fast track processing against Cheyenne Plains Gas Company, LLC (Respondent) alleging that, Respondent violated the Natural Gas Act, Commission regulations, and Respondent's FERC Gas Tariff by: (1) Failing to invalidate the results of an open season that stated the 90-plus year term for which the capacity was being offered in a manner readily susceptible to an interpretation not intended by the Respondent; and (2) failing to hold a second open season that provided all prospective shippers an equal opportunity to bid based on a posting that clearly detailed the terms and conditions of the unsubscribed capacity being offered. Complainant requests, inter alia, that the Commission void Respondent's previous open season and order them to conduct a new open season in compliance with their Tariff and Commission regulations.

The Complainant certifies that a copy of the complaint has been served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20857 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–86–000]

Renewable Energy Systems Americas Inc. and PEAK Wind Development, LLC, Complainants, v. Otter Tail Power Company and Minnkota Power Cooperative, Inc., Respondents; Notice of Complaint

September 2, 2008.

Take notice that on August 29, 2008, pursuant to sections 206 and 212 of the Rules of Practice and Procedure, 18 CFR 385.206 and 385.212 and section 206 of the Federal Power Act, 16 U.S.C. 824e (1994), Renewable Energy Systems Americas Inc. and PEAK Wind Development, LLC (Complainants) filed a formal complaint against Otter Tail Power Company and Minnkota Power Cooperative, Inc. (Respondents) alleging that (1) the Respondents are building a 60-mile, 230 kV transmission line connecting Otter Tail's wind generation project to Minnkota's transmission system thereby ''jumping over'' Complainants' prior-queued interconnection request; (2) Minnkota has denied access to the transmission line; (3) and energy from the wind being constructed by Otter Tail and its generation partner will overload transmission facilities operated by the Midwest Independent Transmission System Operator, Inc. but Otter Tail and its generation partner are not accepting responsibility for the necessary physical upgrades, thereby threatening reliability. Complainants seek relief from the undue preference afforded Otter Tail's generation project, the undue discrimination against Complainants' generation project, and the Respondents' failure to comply with open access transmission requirements.

The Complainants state that a copy of the complaint has been served on the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20802 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–405–002]

Texas Gas Transmission, LLC; Notice of Compliance Filing

September 3, 2008.

Take notice that on April 14, 2008, Texas Gas Transmission LLC (Texas Gas) in compliance with the Commission order issued February 29, 2008, 122 FERC ¶ 61,190 (2008), tendered for filing *Pro Forma* tariff sheets addressing the Commission's concerns for providing market-based rate firm and interruptible storage service under section 4(f) of the Natural Gas Act.

Texas Gas states that copies of the filing have been served on the official service list compiled by the Secretary of the Commission in this proceeding.

Any person desiring to intervene or to protest in this proceeding 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.

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.

This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. The filing is 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.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 10, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20868 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG08–71–000; EG08–72–000; EG08–73–000; EG08–74–000; FC08–3–000; FC08–4–000; FC08–5–000]

UniSource Energy Development Company, Locust Ridge II, LLC, Lempster Wind, LLC, Happy Jack Windpower, LLC,Arasmeta Captive Power Company Private Limited, Sitapuram Power Limited, Regency Power Corporation Private Limited; Notice of Effectiveness of Exempt Wholesale Generator or Foreigen Utility Company Status

September 3, 2008.

Take notice that during the month of March 2008, the status of the above captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20858 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864–079]

Upper Peninsula Power Company; Notice of Availability of Environmental Assessment

September 3, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the proposed lake level amendment for the Bond Falls Project, located in the Ontonagon River Basin in Ontonagon and Gogebic Counties, Michigan and Vilas County, Wisconsin, and has prepared a Final Environmental Assessment (EA). The EA evaluates the environmental impacts that would result from revising the summer season end of month target lake level elevations and minimum flow trigger flow elevations pursuant to license Articles 401 and 402, respectively. The EA finds that approval of the amendment application would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Amending License Articles 401 and 402'' issued August 26, 2008, and is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–1864) excluding the last three digits in the docket number field to access the document. For assistance, call toll-free at 1 (866)–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20863 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–19–006, Docket No. ER05–168–005 (consolidated); Docket No. ER06–274–010 (not consolidated)]

Golden Spread Electric Cooperative, et al. v. Southwestern Public Service Company, Southwestern Public Service Company, Southwestern Public Service Company; Notice of Filing

September 3, 2008.

On August 29, 2008, Southwestern Public Service Company, on behalf of itself, Golden Spread Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Occidental Permian Ltd. and Occidental Power Marketing, L.P., filed an Amendment No. 2 to its Offer of Settlement and Settlement Agreement filed on December 3, 2007 and approved by the Commission on April 21, 2008 in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on September 10, 2008.

Reply Comment Date: 5 pm Eastern Time on September 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20859 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–68–001]

NSTAR Electric & Gas Corporation v. ISO New England, Inc.; Notice of Filing

September 2, 2008.

Take notice that on August 7, 2008, NSTAR Electric & Gas Corporation filed on behalf of itself and Exelon New Boston, LLC, a revised explanatory statement and offer of settlement in compliance with the Commission's directive that the standard of review under Section 6.4 of the Settlement be amended with regard to non-settling third parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll-free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20806 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–28–000]

Calpine Texas Pipeline, L.P.; Notice of Petition for Rate Approval

September 3, 2008.

Take notice that on August 22, 2008, Calpine Texas Pipeline, L.P. (Calpine Texas) filed a petition for approval of rates for transportation services, pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA), and section 284.123(b)(2) of the Commission's regulations. Calpine Texas requests that the Commission approve a maximum monthly reservation charge of $0.5121 per Dth, with a maximum firm commodity charge of $0.00 per Dth, and an interruptible transportation rate of $0.0168 per Dth for its Baytown System. In addition, Calpine Texas requests that the Commission approve a maximum monthly reservation charge of $0.8546 per Dth, with a maximum firm commodity charge of $0.00 per Dth, and an interruptible transportation rate of $0.0281 per Dth for its Freestone System.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene

or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Friday, September 12, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20867 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2277–023]

Union Electric Company, dba AmerenUE; Notice of Site Visit

September 3, 2008.

On September 18, 2008, Federal Energy Regulatory Commission (FERC) staff, together with representatives of AmerenUE (the applicant) and the Missouri Department of Natural Resources, will conduct a site visit of the Taum Sauk Pumped Storage Project and a tour of Johnson's Shut-Ins State Park. The purposes of the one-day site visit and tour are to allow FERC staff working on the relicensing to (a) examine the project and its setting, including the adjacent Johnson's Shut-Ins State Park, and (b) weigh the scope of the applicant's proposed studies and additional study requests filed in response to the Commission's public notice issued July 2, 2008.

The site visit for the Taum Sauk Project will begin at 8 a.m. (CDT), with participants meeting at the gate to the Taum Sauk Plant. The tour of Johnson's Shut-Ins State Park will begin at 2 p.m. Participants planning to attend the tour of the park should meet at the project office located in Johnson's Shut-Ins State Park at the Goggins Mountain trailhead. All interested individuals, organizations, and agencies are invited to attend one or both of the site visits. All participants are responsible for their own transportation to the project and park, as well as throughout the day. Anyone with questions about the site visit should contact Allan Creamer of the FERC at (202) 502–8365. Anyone wishing to attend the site visit for the Taum Sauk Project should contact Mr. Michael Lobbig of AmerenUE at (314) 957–3427 to make the necessary arrangements for access to the project site.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20864 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13108–002]

FFP Detroit 1, LLC; Notice of Surrender of Preliminary Permit

September 2, 2008.

Take notice that FFP Detroit 1, LLC, permittee for the proposed Detroit River Project, has requested that its preliminary permit be terminated. The permit was issued on July 17, 2008, and would have expired on June 30, 2011.[1] The project would have been located on the Detroit River in Wayne County, Michigan.

The permittee filed the request on August 21, 2008, and the preliminary permit for Project No. 13108 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20803 Filed 9–8–08; 8:45 am]

BILLING CODE 6717–01–P

[1] 124 FERC ¶ 62,047.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8712–4; Docket ID No. EPA–HQ–ORD–2008–0058]

Draft Toxicological Review of Carbon Tetrachloride: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer Review Workshop.

SUMMARY: EPA is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review workshop to review the external review draft document titled, ''Toxicological Review of Carbon Tetrachloride: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–08/005A). EPA previously announced the 60-day public comment period (ending July 21, 2008) for the draft document in the **Federal Register** on May 21, 2008 (73 FR 29502). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the **Federal Register** notice (73 FR 29502) to ERG for consideration by the external peer review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

The public may attend this workshop as observers through a registration process, and time will be set aside for observers to give brief oral comments at the workshop regarding the draft document under review. The draft document and EPA's peer review charge are available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. When finalizing the draft document, EPA intends to consider the comments and recommendations from the external peer

review workshop and any public comments that EPA receives in accordance with 73 FR 29502, May 21, 2008. Public comments submitted during the 60-day public comment period ending July 21, 2008 may be observed at *http://www.regulations.gov* under Docket ID No. EPA–HQ–ORD–2008–0058.

DATES: The peer review workshop will begin on October 14, 2008, at approximately 8:30 a.m. and end at approximately 5 p.m., Eastern time. Observers must register by Tuesday, October 7, 2008. Indicate at the time of registration if you wish to make brief oral comments at the workshop.

ADDRESSES: The peer review workshop will be held at the Navy League Building, 2300 Wilson Blvd, Arlington, Virginia 22201. ERG is organizing, convening, and conducting the peer review workshop. To attend the workshop as an observer, register by Tuesday, October 7, 2008, via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-carbontetra.htm*. You may also register by e-mail at *meetings@erg.com* (subject line: Carbon Tetrachloride Workshop), by phone: 781–674–7374 or toll free at 800–803–2833, or by faxing a registration request to 781–674–2906 (please reference the ''Carbon Tetrachloride Peer Review Workshop'' and include your name, title, affiliation, full address and contact information).

The draft ''Toxicological Review of Carbon Tetrachloride: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from NCEA's Technical Information Staff, telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from ERG.

FOR FURTHER INFORMATION CONTACT: For information on the peer review workshop, contact ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7374; facsimile: 781–674–2906; or e-mail: *meetings@erg.com* (subject line: Carbon tetrachloride). If you have questions about the document, contact Susan Rieth, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8582; facsimile: 703–347–8689; or e-mail: *rieth.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Integrated Risk Information System (IRIS)

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for oral comments from the public. Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for pre-registration is October 7, 2008. If space allows, registrations will continue to be accepted after this date, including on-site registrations. Time will be set aside to hear comments from observers, and individuals will be limited to a maximum of five minutes during the morning session of peer review workshop. Please let ERG know if you wish to make comments during the workshop by registering on the Web site at *https://www2.ergweb.com/projects/conferences/peerreview/register-carbontetra.htm* and indicating your intent to make oral comments.

Dated: August 30, 2008.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E8–20877 Filed 9–8–08; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, September 17, 2008 from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a discussion of the Bank's recent activities, as well as the effects of the ''credit crunch'' upon U.S. business and exporting.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 10, 2008, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3232 or TDD (202) 565–3377.

Further Information: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Howard A. Schweitzer,

General Counsel.

[FR Doc. E8–20607 Filed 9–8–08; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Exposure Draft

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of exposure draft, *Reporting Comprehensive Long-Term Fiscal Projections for the U.S. Government.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in

October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft, *Reporting Comprehensive Long-Term Fiscal Projections for the U.S. Government*. The proposed standard would establish reporting requirements for the consolidated financial report of the United States Government (CFR) to address the question of whether the government's future budgetary resources are likely to be sufficient to sustain public services and meet obligations as they come due. The exposure draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350. Respondents are encouraged to comment on any part of the proposal.

Written comments are requested by January 5, 2009, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, FASAB, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92463.

Dated: September 2, 2008.

Charles Jackson,

Federal Register Liaison.

[FR Doc. E8–20666 Filed 9–8–08; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

September 3, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (Commission or FCC) invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 9, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the FCC's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the ''**SUPPLEMENTARY INFORMATION**'' section below or, if there is no OMB control number, the Title as shown in the ''**SUPPLEMENTARY INFORMATION**'' section. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jerry Cowden via e-mail at *PRA@fcc.gov* or at 202–418–0447. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* None.

Title: Information Collection regarding Emergency Backup Power for Communications Assets as set forth in the Commission's rules (47 CFR 12.2).

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 73 respondents; 93 responses.

Estimated Time per Response: 116.64 hours (range of 96 to 192 hours).

Frequency of Response: One-time reporting.

Obligation to Respond: Mandatory.

Total Annual Burden: 10,848 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

Nature and Extent of Confidentiality: All reports and plans required by Section 12.2 of the Commission's rules will be automatically afforded confidentiality because the information in these reports and plans is sensitive for both national security and/or commercial reasons.

Needs and Uses: The Commission adopted an Order (FCC 07–107) that includes an emergency backup power rule (section 12.2). This rule, as modified in an Order on Reconsideration (FCC 07–177), obligates certain specified local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers to file a report that enumerates whether the carriers meet the emergency backup power requirement for assets necessary to maintain communications that are normally powered from local commercial power.

Specifically, Section 12.2(c) requires LECs and CMRS providers to file reports with the Commission that identify the following information: (1) Each asset that was designed to comply with the applicable backup power requirement; (2) each asset where compliance is precluded due to risk to safety or life or health; (3) each asset where compliance is precluded by private legal obligation or agreement; (4) each asset where compliance is precluded by Federal, state, tribal or local law; and (5) each asset that was designed with less than the required emergency backup power capacity and that is not precluded from compliance by risk to safety of life or health, private legal obligation or agreement, or Federal, state, tribal or local law. LECs and CMRS providers must file these reports within six months of the effective date of this requirement, which is the date of the **Federal Register** notice announcing OMB approval of the information collection contained in section 12.2 of

the Commission's rules. LECs and CMRS providers must include a description of facts supporting the basis of the LECs or CMRS provider's claim of preclusion from compliance based on risk to safety of life or health, private legal obligation or agreement, or Federal, state, tribal or local law.

Additionally, LECs and CMRS providers identifying assets designed with less than the emergency backup power capacity required in section 12.2(a) and not otherwise precluded from compliance for one of the three reasons identified in section 12.2(b) must comply with the backup power requirement or file, within 12 months from the effective date of section 12.2, a certified emergency backup power compliance plan that is subject to Commission review. The emergency backup power compliance plan must certify and describe how, in the event of a commercial power failure, the LEC or CMRS provider will provide emergency backup power to 100 percent of the area covered by any non-compliant asset, relying on on-site and/or portable backup power sources or other sources as appropriate. This emergency backup power must be sufficient for service coverage as follows: A minimum of 24 hours for assets inside central offices and eight hours for other assets such as cell sites, remote switches, and digital loop carrier system remote terminals.

LECs that meet the definition of a Class B company as set forth in section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from these reporting requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–20892 Filed 9–8–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 3, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before November 10, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or to *Cathy.Williams@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0174.

Title: Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents/Responses: 23,215 respondents; 1,693,122 responses.

Estimated Time per Response: .0011 hours to 0.1 hours

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Total Annual Burden: 112,096 hours

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 4(i), 317 and 507 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.1212 requires a broadcast station to identify the sponsor of any matter transmitted for consideration. 47 CFR 76.1615 states that, when a cable operator engaged in origination cablecasting presents any matter for which consideration is provided to such cable television system operator, the cable television system operator, at the time of the telecast, shall identify the sponsor. For both sections, for advertising commercial products or services, the mention of the sponsor's name or product, when it is clear that the mention of the product constitutes sponsorship identification, is all that is required. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds.

47 CFR 73.1212 and 76.1715 state that, with respect to sponsorship announcements that are waived when the broadcast/origination cablecast of ''want ads'' sponsored by an individual, the licensee/operator shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1212 states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–20896 Filed 9–8–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Wednesday, September 10, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8–20786 Filed 9–8–08; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE AGENCY

Establishment of a New Independent Agency

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of establishment.

SUMMARY: This Notice is to announce the establishment of a new independent agency. Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008 (Act), created the Federal Housing Finance Agency (FHFA) as an independent agency of the Federal Government. FHFA was established on the date of enactment, July 30, 2008, and the Act provides for the abolishment of the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) one year after the date of enactment. These agencies, together with the Housing and Urban Development Government-Sponsored Enterprise Mission Teams, are combined to establish FHFA. Regulations of FHFA will be found in 12 CFR chapter XII, parts 1200–1299.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel (OFHEO), telephone (202) 414–3788 or Christopher Curtis, General Counsel (FHFB), telephone (202) 408–2802 (not toll free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: FHFA has regulatory authority over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal Home Loan Banks (collectively, the ''regulated entities'') and the Bank System's Office of Finance. The establishment of FHFA strengthens the nation's housing finance system. This new regulator has the authorities necessary to enhance oversight of Fannie Mae, Freddie Mac and the Federal Home Loan Banks—vital components of the nation's secondary mortgage markets.

FHFA was established to oversee the prudential operations of each regulated entity and to ensure:

- That each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;
- That the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities);
- That each regulated entity complies with this title and the rules, regulations, guidelines, and orders issued under this title and the authorizing statutes;
- That each regulated entity carries out its statutory mission only through activities that are authorized under and consistent with this title and the authorizing statutes; and
- That the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.

The authorities, powers and responsibilities of FHFA are contained in Titles 12 U.S.C. 1421 *et seq.* and 4501 *et seq.*, as amended by Division A of Public Law 110–289, 122 Stat. 2654 (2008).

Dated: August 30, 2008.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–20839 Filed 9–8–08; 8:45 am]

BILLING CODE 4220–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 2008.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Larry T. Wilson Descendents Trust and The Kathryn W. Roberts Descendants Trust to join the Wilson Family Control Group, all of Jacksonville, Arkansas, and thereby acquire control of First Arkansas Bancshares, Inc., and thereby indirectly acquire control of First Arkansas Bank and Trust, both of Jacksonville, Arkansas.

Board of Governors of the Federal Reserve System, September 4, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–20881 Filed 9–8–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, September 15, 2008.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications

scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 5, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–20989 Filed 9–5–08; 4:15 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2006–P–0081 (formerly Docket No. 2006P–0178) and FDA–2005–P–0369 (formerly Docket No. 2005P–0023)]

Determination That TEQUIN (Gatifloxacin) Was Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that TEQUIN (gatifloxacin) Tablets, Injection, and Oral Suspension, were withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not accept or approve abbreviated new drug applications (ANDAs) for gatifloxacin oral tablets, injection, or oral suspension that refer to any previously approved dosage forms and strengths of TEQUIN (gatifloxacin).

FOR FURTHER INFORMATION CONTACT: Elena Cohen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6228, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (section 505(j)(7)(C) of the act; § 314.162 (21 CFR 314.162)).

FDA will not approve an ANDA if the listed drug has been withdrawn from sale for safety or effectiveness reasons (section 505(j)(4)(I) of the act). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. A drug that has been withdrawn from the market for safety or effectiveness reasons is not a listed drug (21 CFR 314.3(b)). FDA may not approve an ANDA that does not refer to a listed drug. FDA currently has pending one or more ANDAs that refer to TEQUIN (gatifloxacin).

Bristol-Myers Squibb Co. (BMS) is the holder of three NDAs[1] for TEQUIN tablets, injection, and oral suspension as listed in the following table:

TABLE 1.—APPROVED TEQUIN PRODUCTS

NDA No.	Active Ingredients	Strength	Dosage Form/Route
21–061	Gatifloxacin	200 milligrams (mg)	Tablet; oral
21–061	Gatifloxacin	400 mg	Tablet; oral
21–062	Gatifloxacin	Equivalent to 10 mg/milliliter (mL) (200 mg)	Injectable; injection
21–062	Gatifloxacin	400 mg/40 mL (10 mg/mL)	Injectable; injection
21–062	Gatifloxacin in dextrose 5% in plastic container	200 mg/100 mL (2 mg/mL)	Injectable; injection
21–062	Gatifloxacin in dextrose 5% in plastic container	400 mg/200mL (2 mg/mL)	Injectable; injection
21–678	Gatifloxacin	200 mg/5 mL	Suspension; oral

TEQUIN is an antibacterial drug indicated for the treatment of infections due to susceptible strains of designated microorganisms in the following conditions: Acute bacterial exacerbation of chronic bronchitis; acute sinusitis;

[1] On December 17, 1999, FDA approved NDAs 21–061 and 21–062 for community-acquired pneumonia, acute bacterial exacerbation of chronic bronchitis, acute bacterial sinusitis, uncomplicated urinary tract infections, complicated urinary tract infections, pyelonephritis, and uncomplicated gonorrhea. The December 17, 1999, approval letter also stated that indications for uncomplicated skin and skin structure infections were approvable pending the submission of certain postmarketing data. For administrative purposes, the agency assigned administrative NDAs 21–404 (TEQUIN Tablets) and 21–405 (TEQUIN Injections) for the treatment of uncomplicated skin and skin structure infections. BMS provided a complete response, and upon approval on October 17, 2002, NDAs 21–404 and 21–405 were retired by FDA. The approvals and all other submissions for the treatment of uncomplicated skin and skin structure infections were incorporated in the original NDAs, 21–061 and 21–062. NDAs 21–404 and 21–405 are not listed in the Orange Book, but can be found through a search at *Drugs@FDA*.

community-acquired pneumonia; uncomplicated skin and skin structure infections; uncomplicated and complicated urinary tract infections; pyelonephritis; uncomplicated urethral and cervical gonorrhea; and acute, uncomplicated rectal infections in women.

In January 2003, FDA received revised product labeling relating to several approved supplements for TEQUIN (gatifloxacin). This revised labeling deleted references to TEQUIN injection, 10 milligrams/milliliter (mg/mL) (200 mg), indicating that this product was no longer being marketed; therefore, the product was moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book. In response to a citizen petition from Apotex Corp. (Docket No. FDA–2005–P–0369),[2] FDA stated, in the **Federal Register** of February 3, 2006 (71 FR 5858), that TEQUIN injection, 10 mg/mL (200 mg), was not withdrawn for reasons of safety and effectiveness.

On May 1, 2006, Public Citizen Research Group submitted a citizen petition (Docket No. FDA–2006–P–0081),[3] under 21 CFR 10.30, requesting that FDA immediately ban TEQUIN because of the increased risk of dysglycemia (hypoglycemia, low blood sugar, and hyperglycemia, high blood sugar) in humans. Public Citizen states that it reached its conclusion based on: (1) The relatively high numbers and rates of gatifloxacin-associated dysglycemia adverse event reports calculated from data collected by FDA's Adverse Event Reporting System (AERS) and Health Canada's Adverse Drug Reaction Monitoring Program; (2) a study by Park-Wyllie et al., published in March 2006 in the New England Journal of Medicine, that showed that patients (diabetic and nondiabetic) receiving gatifloxacin had approximately 17 times the odds of having a hyperglycemic episode and 4 times the odds of having a hypoglycemic episode compared to those taking macrolide antibiotics; and (3) the relatively high numbers and rates of gatifloxacin-associated dysglycemic events in the manufacturer's safety studies in uninfected patients and other studies in infected patients, including clinical trials, cohort studies, case-control studies, postmarketing surveillance studies, and case reports.

In June 2006, BMS announced that it would no longer market TEQUIN. In light of pending ANDAs and the citizen petition, FDA examined whether all TEQUIN products, including TEQUIN (gatifloxacin) injection, 10 mg/mL (200 mg), were withdrawn from the market for reasons of safety or effectiveness. After considering the citizen petition and reviewing agency records concerning the drug product, analyses of AERS reports, and relevant literature, FDA has determined under § 314.161 that TEQUIN was withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will remove all TEQUIN products from the Orange Book (§ 314.162). FDA will not accept or approve ANDAs that refer to these drug products.

Therefore, the agency has determined, under § 314.161, that all dosage forms and strengths of TEQUIN (gatifloxacin) listed in the table of this document were withdrawn from sale for reasons of safety. TEQUIN (gatifloxacin) will be removed from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that refer to any dosage form or strength of TEQUIN (gatifloxacin).

Dated: September 2, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–20938 Filed 9–8–08; 8:45 am]

BILLING CODE 4160–01–S

[2] This citizen petition was originally assigned docket number 2005P–0023/CP1. The number was changed to FDA–2005–P–0369 as a result of FDA's transition to its new docketing system (*Regulations.gov*) in January 2008.

[3] This citizen petition was originally assigned docket number 2006P–0178. The number was changed to FDA–2006–P–0081 as a result of FDA's transition to its new docketing system (*Regulations.gov*) in January 2008.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451] (formerly FDA–2004–N–0226)

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 020

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 020'' (Recognition List Number: 020), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Effective September 9, 2008. Submit written or electronic comments concerning this document at any time.

ADDRESSES: Submit written requests for single copies of ''Modifications to the List of Recognized Standards, Recognition List Number: 020'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 240–276–3151. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments to *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfTopic/cdrhnew.cfm*. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 020 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8714.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The document described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in

the **Federal Register**, are identified in table 1 of this document.

TABLE 1.—PREVIOUS PUBLICATIONS OF STANDARD RECOGNITION LISTS

October 16, 1998 (63 FR 55617)	October 4, 2004 (69 FR 59240)
July 12, 1999 (64 FR 37546)	May 27, 2005 (70 FR 30756)
November 15, 2000 (65 FR 69022)	November 8, 2005 (70 FR 67713)
May 7, 2001 (66 FR 23032)	March 31, 2006 (71 FR 16313)
January 14, 2002 (67 FR 1774)	June 23, 2006 (71 FR 36121)
October 2, 2002 (67 FR 61893)	November 3, 2006 (71 FR 64718)
April 28, 2003 (68 FR 22391)	May 21, 2007 (72 FR 28500)
March 8, 2004 (69 FR 10712)	September 12, 2007 (72 FR 52142)
June 18, 2004 (69 FR 34176)	December 19, 2007 (72 FR 71924)

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains ''hypertext markup language (HTML)'' and ''portable document format (PDF)'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 020

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. In addition to these changes, FDA has also established a new internal numbering system that assigns unique identification recognition numbers. FDA believes this new numbering system will facilitate the use of FDA Form 3654, ''Standards Data Report for 510(k)s,'' which was implemented in November 2007. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency's searchable database. FDA will use the term ''Recognition List Number: 020'' to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old Recognition No.	Replacement Recognition No.	Standard	Change
A. Anesthesia			
1–11		IEC 60601–3–1:1996–08 Medical Electrical Equipment Part 3–1: Essential Performance Requirements for Transcutaneous Oxygen and Carbon Dioxide Partial Pressure Monitoring Equipment	Withdrawn
1–46		ISO 5367:2000 Breathing Tubes Intended for Use With Anaesthetic Apparatus and Ventilators	Relevant guidance and Extent of recognition
1–51		ASTM F1101–90(1997) Standard Specification for Ventilators Intended for Use During Anesthesia	Withdrawn
1–62		ISO 5356–1:2004 Anaesthetic and Respiratory Equipment—Conical Connectors: Part 1: Cones and Sockets	Relevant guidance
1–66		ISO 9919:2005: Medical Electrical Equipment—Particular Requirements for the Basic Safety and Essential Performance of Pulse Oximeter Equipment for Medical Use	Relevant guidance
1–68		CGA V–5:2005 Diameter-Index Safety System (Noninterchangeable Low Pressure Connections for Medical Gas Applications)	Relevant guidance
1–72		ISO 10651–5:2006 Lung Ventilators for Medical Use—Particular Requirements for Basic Safety and Essential Performance—Part 5: Gas-powered Emergency Resuscitators	Relevant guidance, Code of Federal Regulations (CFR) Citation and Product Codes
1–73		ISO 10651–4:2002 Lung Ventilators—Part 4: Particular Requirements for Operator Powered Resuscitators	Relevant guidance
B. Biocompatibility			
2–21	2–118	ANSI/AAMI/ISO 10993–11: 2006 Biological Evaluation of Medical Devices—Part 11: Tests for System Toxicity	Withdrawn and replaced with newer version
2–56	2–119	ASTM F813–07 Standard Practice for Direct Contact Cell Culture Evaluation of Materials for Medical Devices	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
2–63	2–120	ANSI/AAMI/ISO 10993–6: 2007 Biological Evaluation of Medical Devices—Part 6: Tests for Local Effects After Implantation	Withdrawn and replaced with newer version
2–66	2–121	ASTM F2148–07e1 Standard Practice for Evaluation of Delayed Contact Hypersensitivity Using the Murine Local Lymph Node Assay (LLNA)	Withdrawn and replaced with newer version
2–68	2–122	ASTM F719–81 (2007) e1 Standard Practice for Testing Biomaterials in Rabbits for Primary Skin Irritation	Withdrawn and replaced with newer version
2–69	2–123	ASTM F720–81 (2007) e1 Standard Practice for Testing Guinea Pigs for Contact Allergens: Guinea Pig Maximization Test	Withdrawn and replaced with newer version
2–70	2–124	ASTM F750–87 (2007) e1 Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse	Withdrawn and replaced with newer version
2–89	2–125	ASTM F749–98 (2007) e1 Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit	Withdrawn and replaced with newer version
2–92	2–126	ASTM F748–06 Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices	Withdrawn and replaced with newer version
2–95		ASTM F1984–99(2003) Standard Practice for Testing for Whole Complement Activation in Serum by Solid Materials	Relevant guidance
2–109	2–128	USP 31–NF26 Biological Test <87> 2008 Biological Reactivity Test, In Vitro—Direct Contact Test	Withdrawn and replaced with newer version
2–110	2–129	USP 31–NF26 Biological Test <88> 2008 Biological Reactivity Test, In Vitro—Elution Test	Withdrawn and replaced with newer version
2–111	2–130	USP 31–NF26 Biological Test <88> 2008 Biological Reactivity Test, In Vitro, Procedure—Preparation of Sample	Withdrawn and replaced with newer version
2–112	2–131	USP 31–NF26 Biological Test <88> 2008 Biological Reactivity Test, In Vitro, Classification of Plastics—Intracutaneous Test	Withdrawn and replaced with newer version
2–113	2–132	USP 31–NF26Biological Test <88> 2008 Biological Reactivity Test, In Vivo—Classification of Plastics—Systemic Injection Test	Withdrawn and replaced with newer version
C. Cardiovascular/Neurology			
3–2		ANSI/AAMI EC53:1995/(R)2001—ECG Cables and Leadwires	Reaffirmation
3–3		ANSI/AAMI NS28:1988/(R)2006—Intracranial Pressure Monitoring Devices	Reaffirmation
3–16	3–60	IEC 60601–2–10: Amendment 1: 2001–09, Medical Electrical Equipment—Part 2–10: Particular Requirements for the Safety of Nerve and Muscle Stimulators	Withdrawn and replaced with newer version
3–18	3–61	IEC 60601–2–27: 2005–08, Second Edition, Medical Electrical Equipment—Part 2–27: Particular Requirements for the Safety, Including Essential Performance, of Electrocardiographic Monitoring Equipment	Withdrawn and replaced with newer version
3–20	3–62	IEC 60601–2–31: 2008–03, Edition 2.0, Medical Electrical Equipment—Part 2–31: Particular Requirements for the Basic Safety and Essential Performance of External Cardiac Pacemakers with Internal Power Source	Withdrawn and replaced with newer version
3–25	3–63	ISO 11318:2002, Second Edition, Cardiac Defibrillators—Connector Assembly DF–1 for Implantable Defibrillators—Dimensions and Test Requirements	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
3–40		ANSI/AAMI SP9:1994, Non-automated Sphygmomanometers	Withdrawn
3–41		ANSI/AAMI EC11:1991/(R)2007—Diagnostic Electrocardiographic Devices	Reaffirmation
3–42		ANSI/AAMI EC13:2002/(R)2007—Cardiac Monitors, Heart Rate Meters, and Alarms	Reaffirmation
3–43	3–65	ANSI/AAMI EC38:2007—Medical Electrical Equipment—Part 2–47: Particular Requirements for the Safety, Including Essential Performance, of Ambulatory Electrocardiographic Systems	Withdrawn and replaced with newer version
3–44		ANSI/AAMI BP22:1994/(R)2006, Blood Pressure Transducers	Reaffirmation
3–45		ANSI/AAMI EC57:1998/(R)2003, Testing and Reporting Performance Results of Cardiac Rhythm and ST Segment Measurement Algorithms	Reaffirmation
3–47	3–66	ASTM F2081–06, Standard Guide for Characterization and Presentation of the Dimensional Attributes of Vascular Stents	Withdrawn and replaced with newer version
3–52		ANSI/AAMI EC12:2000/(R)2005, Disposable ECG Electrodes	Reaffirmation
3–57	3–67	ASTM F2129–06, Standard Test Method for Conducting Cyclic Potentiodynamic Polarization Measurements to Determine the Corrosion Susceptibility of Small Implant Devices	Withdrawn and replaced with newer version
D. Dental/Ear, Nose, and Throat			
4–43		ANSI/ADA Specification No. 5–Dental Casting Alloys:1997	Type of standard, and Relevant guidance
4–50		ANSI/ADA Specification No. 18–Alginate Impression Materials:1992	Title and Relevant guidance
4–52	4–147	ANSI/ADA Specification No. 27–Resin-Based Filling Materials: 2005	Withdrawn and replaced with newer year
4–62		ISO 1563:1990 Dental Alginate Impression Material	Relevant guidance and Extent of recognition
4–63		ISO 1564:1995 Dental Aqueous Impression Materials Based on Agar	Relevant guidance
4–65	4–151	ISO 3336:1993, Dentistry—Synthetic Polymer Teeth	Withdrawn and replaced with newer version
4–66		ISO 4049:1988, Dentistry—Resin-Based Filling Materials	Withdrawn—newer version previously recognized
4–67		ISO 6871–1:1994, Dental Base Metal Casting Alloys Part 1: Cobalt-based Alloys—TECHNICAL CORRIGENDUM 1:1998	Withdrawn—newer version previously recognized
4–68		ISO 6871–2:1994, Dental Base Metal Casting Alloys Part 2: Nickel-Based Alloys	Withdrawn—newer version previously recognized
4–69		ISO 6872:1995/Amendment 1:1997 Dental Ceramic	Date of standard and Extent of recognition
4–73		ISO 7405:1997 Dentistry—Preclinical Evaluation of Biocompatibility of Medical Devices Used in Dentistry—Test Methods for Dental Materials	Extent of recognition and Contact person
4–75		ISO 7785–1:1997 Dental Handpieces—Part 1: High-Speed Air Turbine Handpieces	Relevant guidance and Extent of recognition

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
4–76		ISO 7785–2:1995 Dental Handpieces—Part 2: Straight and Geared Angle Handpieces	Relevant guidance and Extent of recognition
4–78		ISO 9168:1991 Dental Handpieces—Hose Connectors	Relevant guidance and Extent of recognition
4–83		ISO 11498:1997 Dental Handpieces—Dental Low-Voltage Electrical Motors	Relevant guidance and Extent of recognition
4–84		ISO 13294:1997 Dental Handpieces—Dental Air-Motors	Relevant guidance and Extent of recognition
4–88	4–148	ANSI/ADA Specification No. 78–Endodontic Obturating Cones: 2005	Withdrawn and replaced with newer version
4–89		ANSI/ADA Specification No. 53–Polymer-Based Crowns and Bridge Resins: 1999 (Reaffirmed 2005)	Reaffirmation and Relevant guidance
4–90		ANSI/ASA S3.39:1987 (R2007), Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance)	Reaffirmation and Type of standard
4–91		ANSI/ADA Specification No. 80–Dental Materials—Determination of Color Stability: 2001	Relevant guidance
4–92		ANSI/ADA Specification No. 88–Dental Brazing Alloys: 2000 (Reaffirmed 2006)	Reaffirmation and Relevant guidance
4–93	4–159	IEEE ANSI C63.19:2007 Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids	Withdrawn and replaced with newer version
4–94		ANSI/ADA Specification No. 14—Dental Base Metal Casting Alloys: 1982 (Reaffirmed 1998)	Reaffirmation, Date of standard, Type of standard, Offices, Relevant guidance
4–95		ANSI/ADA Specification No.17:1999, Dental Base Temporary Relining Resin	Withdrawn—newer version previously recognized
4–96		ANSI/ADA Specification No. 30—Dental Zinc Oxide—Eugenol and Zinc Oxide—Non-Eugenol Cements: 2000 (Reaffirmed 2005)	Reaffirmation and Relevant guidance
4–97		ANSI/ADA Specification No. 57—Endodontic Sealing Material: 2000 (Reaffirmed 2006)	Reaffirmation, Offices and Type of standard
4–98		ANSI/ADA Specification No. 96:2000, Dental-Water-Based Cements	Withdrawn—newer version previously recognized
4–99		ISO 4049: 2000 Dentistry—Polymer-based Filling, Restorative and Luting Materials	Relevant guidance, Type of standard and Extent of recognition
4–100	4–133	ISO 6876:2001, Dental Root Canal Sealing Materials	Withdrawn (duplicate)
4–101		ISO 8891:1998, Dental Casting Alloys With Noble Metal Content of At Least 25% but Less Than 75%	Withdrawn—newer version previously recognized
4–102	4–152	ISO 9693:1999, Metal-Ceramic Dental Restorative Systems	Withdrawn and replaced with newer version
4–104	4–149	ANSI/ADA Specification No. 39—Pit and Fissure Sealants: 2006	Withdrawn and replaced with newer version
4–105		ANSI/ADA Specification No. 75—Resilient Lining Materials for Removable Dentures—Part 1: Short-Term Materials: 1997 (Reaffirmed 2003)	Type of standard and Relevant guidance
4–107		ISO 9917–2:1998 Dental Water-Based Cements—Part 2: Light-Activated Cements	Devices affected, Type of standard, Relevant guidance and Extent of recognition

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
4–109		ISO 13716:1999 Dentistry—Reversible-Irreversible Hydrocolloid Impression Material Systems	Type of standard, Relevant guidance, Extent of recognition and Code of Federal Regulations (CFR) citation
4–110		ANSI/ADA Specification No. 11—Agar Impression Materials: 1997	Type of standard and Relevant guidance
4–111		ANSI/ADA Specification No. 13—Denture Cold-Curing Repair Resins: 1981 (Reaffirmed 2006)	Reaffirmation, Date of standard, Type of standard and Relevant guidance
4–112		ANSI/ADA Specification No. 16—Dental Impression Paste—Zinc Oxide-Eugenol Type: 1961 (Reaffirmed 1999)	Reaffirmation, Date of standard, Type of standard and Relevant guidance
4–113		ANSI/ADA Specification No. 20—Dental Duplicating Material: 1972 (Reaffirmed 1995)	Reaffirmation, Date of standard, Type of standard and Relevant guidance
4–115	4–153	ISO 9917–1:2007 Dentistry—Water-Based Cements—Part 1: Powder/Liquid Acid-Base Cements	Withdrawn and replaced with a newer year
4–117		ANSI/ADA Specification No. 12—Denture Base Polymers: 2002	Type of standard
4–119		ANSI/ADA Specification No. 82—Dental Reversible/Irreversible Hydrocolloid Impression Material Systems: 1998 (Reaffirmed 2003)	Reaffirmation, Date of standard, Type of standard and Relevant guidance
4–120		ISO 10139–2:1999 Dentistry—Soft Lining Materials for Removable Dentures—Part 2: Materials for Long-Term Use	Type of standard, Relevant guidance and Extent of recognition
4–121		ISO 7494–2:2003 Dentistry—Dental Units—Part 2: Water and Air Supply	Type of standard and Extent of recognition
4–125		ISO 1562:2004, Dentistry—Casting Gold Alloys	Withdrawn—newer version previously recognized
4–126		ISO 10477:2004 Dentistry—Polymer-Based Crown and Bridge Materials	Extent of recognition and Relevant guidance
4–127		ANSI/ADA Specification No. 58—Root Canal Files, Type H (Hedstrom): 2004	Type of standard and Extent of recognition
4–128		ISO 4823:2000,, Dentistry—Elastomeric Impression Materials and Technical Corrigendum 1:2004	Withdrawn
4–129	4–150	ANSI/ADA Specification No. 19—Dental Elastomeric Impression Material: 2004	Withdrawn and replaced with newer version
4–130		ANSI/ADA Specification No. 17—Denture Base Temporary Relining Resins: 1983 (Reaffirmed 2006)	Reaffirmation, Processes impacted, Extent of recognition, CFR citations and Relevant guidance
4–131		ISO 3107: 2004 Dentistry—Zinc Oxide/Eugenol and Zinc Oxide/Non-eugenol Cements Technical Corrigendum 1:2006–Third Edition	Processes impacted and Relevant guidance
4–132		ISO 6874:2005 Dentistry—Polymer-Based Pit and Fissure Sealants	Extent of recognition and Relevant guidance
4–133		ISO 6876:2001 Dental Root Canal Sealing Materials	Processes impacted and Extent of recognition
4–134		ISO 7494–1:2004 Dentistry—Dental Units—Part 1: General Requirements and Test Methods	Extent of recognition
4–135		ISO 10139–1:2005 Dentistry—Soft Lining Materials for Removable Dentures—Part 1: Materials for Short-term Use	Relevant guidance and Extent of recognition

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
4–136		ASTM F2504–05 Standard Practice for Describing System Output of Implantable Middle Ear Hearing Devices	Relevant guidance
4–137		ISO 6877:2006 Dentistry—Root-Canal Obturating Points	Extent of recognition
4–139		ANSI/ADA Specification No. 48—Visible Light Curing Units: 2004	Relevant guidance
4–140		ISO 6871–2:1994/Amd 1:2005, Dental Base Metal Casting Alloys—Part 2: Nickel-Based Alloys	Withdrawn—newer version previously recognized
4–141		ISO 6871–1:1994, Dental Base Metal Casting Alloys—Part 1: Cobalt-Based Alloys	Withdrawn—newer version previously recognized
4–142		ISO 6871–1:1994/Amd 1:2005, Dental Base Metal Casting Alloys—Part 1: Cobalt-Based Alloys	Withdrawn—newer version previously recognized
4–143		ANSI/ADA Specification No.96, Dental-Water-Based Cements	Reaffirmation, Type of standard and Relevant guidance
4–145		ISO 22803:2004 Dentistry—Membrane Materials for Guided Tissue Regeneration in Oral and Maxillofacial Surgery—Contents of a Technical File	Relevant guidance and Devices affected
4–146		ISO 22674:2006 Dentistry—Metallic Materials for Fixed and Removable Restorations and Appliances	Devices affected and Processes impacted
E. General			
5–7	12–185	IEC 60601–1–3(1994–07) Medical Electrical Equipment—Part 1: General Requirements for Safety; General Requirements for Radiation Protection in Diagnostic X-Ray Equipment	Transferred
5–8	5–41	IEC 60601–1–4:2000 Medical Electrical Equipment—Part 1–4: General Requirements for Safety—Collateral Standard: Programmable Electrical Medical Systems, Edition 1.1	Withdrawn and replaced with newer version
5–16	5–42	ASTM D903–98(2004) Standard Test Methods for Peel or Stripping Strength of Adhesive Bonds	Withdrawn and replaced with newer version
5–19		ASTM E876/1995 Standard Practice for Use of Statistics in the Evaluation of Spectrometric Data	Withdrawn
5–25	5–43	ANSI/ESD S20.20–2007 Standard for the Development of an Electrostatic Discharge Control Program for Protection of Electrical and Electronic Parts, Assemblies and Equipment (Excluding Electrically Initiated Explosive Devices)	Withdrawn and replaced with newer version
5–28		IEC 60601–1–2, (Second Edition, 2001) Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests	Extent of recognition
5–30		AAMI/ANSI/IEC 60601–1–2 Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests (AAMI/ANSI/IEC 60601–1–2:2001 is the U.S. version of IEC 60601–1–2:2001 with identical requirements for electromagnetic compatibility (EMC) of medical electrical equipment.)	Type of standard and Extent of recognition
5–33	5–44	IEC 60601–1–8:2006 Medical Electrical Equipment—Part 1–8: General Requirements for Basic Safety and Essential Performance—Collateral Standard: General Requirements, Tests and Guidance for Alarm Systems in Medical Electrical Equipment and Medical Electrical Systems, Second Edition	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
5–34		IEC 60601–1–2 Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests (Edition 2:2001 with Amendment 1:2004; Edition 2.1 (Edition 2:2001 consolidated with Amendment 1:2004))	Extent of recognition
5–35		AAMI/ANSI/IEC 60601–1–2 Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral standard: Electromagnetic Compatibility—Requirements and Tests (Edition 2:2001 with Amendment 1:2004) (AAMI/ANSI/IEC 60601–1–2:2001 with Amendment 1:2004 is the U.S. version of IEC 60601–1–2:2001 with Amendment 1:2004, with identical requirements for electromagnetic compatibility (EMC) of medical electrical equipment)	Type of standard and Extent of recognition
5–36		ANSI/AAMI/ISO TIR 16142:2006: Technical Information Report: Medical Devices—Guidance on the Selection of Standards in Support of Recognized Essential Principles of Safety and Performance of Medical Devices, Second Edition	CFR Citations, Product codes and Relevant guidance
F. General Hospital/General Plastic Surgery			
6–16		ISO 7886–1:1993 Sterile Hypodermic Syringes for Single Use—Part 1: Syringes for Manual Use	Withdrawn
6–117		ASTM F2172–02: Standard Specification for Blood/Intravenous Fluid/Irrigation Fluid Warmers	Relevant guidance
6–118		ASTM F2196–02 Standard Specification for Circulating Liquid and Forced Air Patient Temperature Management Devices	Relevant guidance, Contact person
6–131	6–203	ASTM D6499–07 Standard Test Method for the Immunological Measurement of Antigenic Protein in Natural Rubber and Its Products	Withdrawn and replaced with newer version
6–160	6–204	ISO 8537:2007 Sterile Single-Use Syringes, With or Without Needle, for Insulin	Withdrawn and replaced with newer version
6–166	6–215	ASTM F2132–01(2008) Standard Specification for Puncture Resistance of Materials Used in Containers for Discarded Medical Needles and Other Sharps	Withdrawn and replaced with newer version
6–167		ASTM D6319–00a(2005) Standard Specification for Nitrile Examination Gloves for Medical Application	Relevant guidance
6–188	6–205	USP 31:2008 Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version
6–189	6–206	USP 31<11>2008 Sterile Sodium Chloride for Irrigation	Withdrawn and replaced with newer version
6–190	6–207	USP 31:2008 Absorbable Surgical Suture	Withdrawn and replaced with newer version
6–191	6–208	USP 31<881>:2008 Tensile Strength	Withdrawn and replaced with newer version
6–192	6–209	USP 31<861>:2008 Sutures—Diameter	Withdrawn and replaced with newer version
6–193	6–210	USP 31<871>:2008 Sutures Needle Attachment	Withdrawn and replaced with newer version
6–194	6–211	USP 31<11>: 2008 Sterile Water for Irrigation	Withdrawn and replaced with newer version
6–195	6–212	USP 31<11>: 2008 Heparin Lock Flush Solution	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
6–196	6–213	USP 31<11>: 2008 Sodium Chloride Injection	Withdrawn and replaced with newer version
6–198		ASTM F2100–07 Standard Specification for Performance of Materials Used in Medical Face Masks	Relevant guidance
6–201		ISO 8536–4:2007 Infusion Equipment for Medical Use—Part 4: Infusion Sets for Single Use, Gravity Feed	Relevant guidance
G. In Vitro Diagnostic			
7–6	7–131	CLSI ILA18–A2 Specifications for Immunological Testing for Infectious Diseases	Withdrawn and replaced with newer version
7–11	7–132	CLSI MM03–A2 Molecular Diagnostic Methods for Infectious Diseases	Withdrawn and replaced with newer version
7–12		CLSI/NCCLS C12–A Definitions of Quantities and Conventions Related to Blood pH and Gas Analysis; Approved Standard (1994)	Withdrawn
7–13		CLSI/NCCLS C21–A Performance Characteristics for Devices Measuring PO2 and PCO2 in Blood Samples; Approved Standard (1992)	Withdrawn
7–15		CLSI/NCCLS C25–A Fractional Oxyhemoglobin, Oxygen Content and Saturation, and Related Quantities in Blood: Terminology, Measurement, and Reporting; Approved Guideline (1997)	Withdrawn
7–16		CLSI/NCCLS C27–A Blood Gas Preanalytical Considerations: Specimen Collection, Calibration, and Controls; Approved Guideline (1993)	Withdrawn
7–18	7–133	CLSI C30–A2, Point-of Care Blood Glucose Testing in Acute and Chronic Care Facilities	Withdrawn and replaced with newer version
7–21		CLSI C42–A, Erythrocyte Protoporphyrin Testing; Approved Guideline (1996)	Contact person
7–22	7–134	CLSI GP20–A2 Fine-Needle Aspiration Biopsy (FNAB) Techniques	Withdrawn and replaced with newer versions
7–25		NCCLS H8–A2 Detection of Abnormal Hemoglobin Using Cellulose Acetate Electrophoresis—Second Edition; Approved Standard (1994)	Withdrawn
7–26		NCCLS H9–A Chromatographic (Microcolumn) Determination of Hemoglobin A2; Approved Standard (1989)	Withdrawn
7–27		NCCLS H10–A2 Solubility Test to Confirm the Presence of Sickling Hemoglobins—Second Edition; Approved Standard (1995)	Withdrawn
7–29		NCCLS H14–A2 Devices for Collection of Skin Puncture Blood Specimens—Second Edition; Approved Guideline (1990)	Withdrawn
7–34	7–135	CLSI H44–A2 Methods for Reticulocyte Counting (Flow Cytometry and Supravital Dyes)	Withdrawn and replaced with newer version
7–35		CLSI H47–A One-Stage Prothrombin Time (PT) Test and Activated Partial Thromboplastin Time (APTT) Test; Approved Guideline (1996)	Contact person
7–36	7–136	CLSI ILA02–A2 Quality Assurance of Laboratory Tests for Autoantibodies to Nuclear Antigens	Withdrawn and replaced with newer version
7–37		CLSI ILA06–A Detection and Quantitation of Rubella IgG Antibody	Contact person

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
7–38		CLSI/NCCLS I/LA10–A Choriogonadotropin Testing: Nomenclature, Reference Preparations, Assay Performance, and Clinical Application; Approved Guideline (1996)	Withdrawn
7–39		CLSI/NCCLS I/LA17–A Assessing the Quality of Systems for Alpha-Fetoprotein (AFP) Assays Used in Prenatal Screening and Diagnosis of Neural Tube Defects; Approved Guideline (1997)	Withdrawn
7–40		NCCLS I/LA18–A Specifications for Immunological Testing for Infectious Diseases; Approved Guideline (1994)	Withdrawn
7–41		CLSI ILA19–A Primary Reference Preparations Used to Standardize Calibration of Immunochemical Assays for Serum Prostate Specific Antigen (PSA); Approved Guideline (1997)	Contact person
7–42		CLSI ILA20–A Evaluation Methods and Analytical Performance Characteristics of Immunological Assays for Human Immunoglobulin E (IgE) Antibodies of Defined Allergen Specificities; Approved Guideline (1997)	Contact person
7–43	7–137	CLSI LA04–A5 Blood Collection on Filter Paper for Newborn Screening Programs	Withdrawn and replaced with newer version
7–46	7–138	CLSI M27–A2, Reference Method for Broth Dilution Antifungal Susceptibility Testing of Yeasts	Withdrawn and replaced with newer version
7–49		CLSI H26–A Performance Goals for the Internal Quality Control of Multichannel Hematology Analyzers; Approved Standard	Contact person
7–50		NCCLS D11–A2 Glossary and Guidance for Immunodiagnostic Procedures, Reagents, and Reference Materials—Second Edition, Approved Guideline	Withdrawn
7–51	7–139	CLSI GP27–A2 Using Proficiency Testing to Improve the Clinical Laboratory	Withdrawn and replaced with newer version
7–52		CLSI / NCCLS NRSCL 8–A Terminology and Definitions for use in NCCLS Documents; Approved Standard	Withdrawn
7–53	7–140	CLSI GP22–A2 Continuous Quality Improvement	Withdrawn and replaced with newer version
7–55	7–141	CLSI H18–A3 Procedures for the Handling and Processing of Blood Specimens	Withdrawn and replaced with newer version
7–58	7–142	CLSI H11–A4 Procedures for the Collection of Arterial Blood Specimens	Withdrawn and replaced with newer version
7–59	13–9	CLSI / NCCLS AUTO2–A Laboratory Automation: Bar Codes for Specimen Container Identification; Approved Standard	Transferred
7–60	13–10	NCCLS AUTO1–A Laboratory Automation: Specimen Container/Specimen Carrier; Approved Standard	Transferred
7–61	13–11	NCCLS AUTO3–A Laboratory Automation: Communications with Automated Clinical Laboratory Systems, Instruments, Devices, and Information Systems; Approved Standard	Transferred
7–62	13–12	NCCLS AUTO4–A Laboratory Automation: Systems Operational Requirements, Characteristics, and Information Elements; Approved Standard	Transferred
7–63	13–13	NCCLS AUTO5–A Laboratory Automation: Electromechanical Interfaces; Approved Standard	Transferred
7–64	13–14	NCCLS POCT1–A Point-of-Care Connectivity; Approved Standard	Transferred

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
7–67	7–143	CLSI EP14–A2 Evaluation of Matrix Effects	Withdrawn and replaced with newer version
7–68	13–15	NCCLS GP19–A2 Laboratory Instruments and Data Management Systems: Design of Software User Interfaces and End-User Software Systems Validation, Operation, and Monitoring; Approved Guideline—Second Edition	Transferred
7–70	7–144	CLSI H4–A5 Procedures and Devices for the Collection of Diagnostic Blood Specimens by Skin Puncture	Withdrawn and replaced with newer version
7–72	7–145	CLSI H42–A2 Enumeration of Immunologically Defined Cell Populations by Flow Cytometry	Withdrawn and replaced with newer version
7–74	7–146	NCCLS M6–A2 Protocols for Evaluating Dehydrated Mueller-Hinton Agar	Withdrawn and replaced with newer version
7–77	7–147	CLSI M22–A3 Quality Control for Commercially Prepared Microbiological Culture Media	Withdrawn and replaced with newer version
7–79	7–148	CLSI M28–A2 Procedures for the Recovery and Identification of Parasites From the Intestinal Tract	Withdrawn and replaced with newer version
7–80		CLSI MM01–A2 Molecular Diagnostic Methods for Genetic Diseases	Withdrawn
7–83		NCCLS C46–A Blood Gas and pH Analysis and Related Measurements; Approved Guideline	Withdrawn
7–85	7–149	CLSI C24–A3 Statistical Quality Control for Quantitative Measurement Procedures	Withdrawn and replaced with newer version
7–90	7–150	CLSI H43–A2 Clinical Flow Cytometric Analysis of Neoplastic Hematolymphoid Cells	Withdrawn and replaced with newer version
7–93		NCCLS EP10–A2, Preliminary Evaluation of Quantitative Clinical Laboratory Methods; Approved Guideline	Withdrawn
7–94	7–152	CLSI EP12–A2 User Protocol for Evaluation of Qualitative Test Performance	Withdrawn and replaced with newer version
7–95	7–153	CLSI EP15–A2 User Verification of Performance for Precision and Trueness	Withdrawn and replaced with newer version
7–98	7–154	CLSI MM02–A2 Immunoglobin and T-Cell Receptor Gene Rearrangement Assays	Withdrawn and replaced with newer version
7–99		CLSI MM5–A Nucleic Acid Amplification Assays for Molecular Hematopathology	Contact person
7–103	7–155	CLSI H03–A6 Procedures for the Collection of Diagnostic Blood Specimens by Venipunture	Withdrawn and replaced with newer version
7–106	7–156	CLSI M02–A9 Performance Standards for Antimicrobial Disk Susceptibility Tests	Withdrawn and replaced with newer version
7–107	7–157	CLSI M11–A7 Methods for Antimicrobial Susceptibility Testing of Anaerobic Bacteria	Withdrawn and replaced with newer version
7–108	7–158	CLSI M7–A7 Methods for Antimicrobial Susceptibility Tests of Anaerobic Bacteria	Withdrawn and replaced with newer version
7–109		CLSI AUTO7–A Laboratory Automation: Data Content for Specimen Identification; Approved Standard	Withdrawn
7–111	7–159	CLSI H21–A5 Collection, Transport, and Processing of Blood Specimens for Testing Plasma-Based Coagulation Assays and Molecular Hemostasis Assays	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
7–114	13–16	CLSI LIS01–A Standard Specification for Low-Level Protocol to Transfer Messages Between Clinical Laboratory Instruments and Computer Systems	Transferred
7–115	13–17	CLSI LIS02–A2 Standard Specification for Transferring Information Between Clinical Instruments and Computer Systems; Approved Standard-Second Edition	Transferred
7–116	13–18	CLSI LIS03–A Standard Guide for Selection of a Clinical Laboratory Information Management System	Transferred
7–117	13–19	CLSI LIS04–A Standard Guide for Documentation of Clinical Laboratory Computer Systems	Transferred
7–118	13–20	CLSI LIS05–A, Standard Specification for Transferring Clinical Observations Between Independent Computer Systems	Transferred
7–119	13–21	CLSI LIS06–A Standard Practice for Reporting Reliability of Clinical Laboratory Information Systems	Transferred
7–120	13–22	CLSI LIS07–A Standard Specification for Use of Bar Codes on Specimen Tubes in the Clinical Laboratory	Transferred
7–121	13–23	CLSI LIS08–A Standard Guide for Functional Requirements of Clinical Laboratory Information Management Systems	Transferred
7–122	13–24	CLSI LIS09–A Standard Guide for Coordination of Clinical Laboratory Services within the Electronic Health Record Environment and Networked Architectures	Transferred
7–125		CLSI/NCCLS M28–A2 Volume 25, No. 16 Procedures for the Recovery and Identification of Parasites From the Intestinal Tract; Approved Guideline	Withdrawn
H. Materials			
8–32		ASTM F1586–02: Standard Specification for Wrought Nitrogen Strengthened 21 Chromium–10 Nickel–3 Manganese–2.5 Molybdenum Stainless Steel Bar for Surgical Implants (UNS S31675)	Contact person
8–44		ASTM F0136–02a: Standard Specification for Wrought Titanium–6 Aluminum–4 Vanadium ELI (Extra Low Interstitial) Alloy for Surgical Implant Applications (UNS R56401)	Contact person
8–46	8–154	ASTM F0621–08: Standard Specification for Stainless Steel Forgings for Surgical Implants	Withdrawn and replaced with newer year version
8–50		ASTM F1091–02: Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy Surgical Fixation Wire (UNS R30605)	Contact person
8–52		ASTM F1350–02: Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673)	Contact person
8–53		ASTM F1472–02a: Standard Specification for Wrought Titanium -6Aluminum -4Vanadium Alloy for Surgical Implant Applications (UNS R56400)	Contact person
8–54	8–155	ASTM F1580–07 Standard Specification for Titanium and Titanium–6 Aluminum–4 Vanadium Alloy Powders for Coatings of Surgical Implants	Withdrawn and replaced with newer year version
8–57		ISO 5832–2:1999, Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium	Contact person
8–58		ISO 5832–3:1996, Implants for Surgery—Metallic Materials—Part 3: Wrought Titanium 6–Aluminium 4–Vanadium Alloy	Contact person

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
8–59		ISO 5832–4:1996, Implants for Surgery—Metallic Materials—Part 4: Cobalt-Chromium-Molybdenum Casting Alloy	Contact person
8–61		ISO 5832–6:1997, Implants for Surgery—Metallic Materials—Part 6: Wrought Cobalt-Nickel-Chromium-Molybdenum Alloy	Contact person
8–63		ISO 5832–11:1994, Implants for Surgery—Metallic Materials—Part 11: Wrought Titanium 6–Aluminium 7–Niobium Alloy	Contact person
8–76		ASTM F138–03: Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673)	Contact person
8–77	8–156	ASTM F0139–08, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Sheet and Strip for Surgical Implants (UNS S31673)	Withdrawn and replaced with newer year version
8–79		ASTM F0961–03, Standard Specification for Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy Forgings for Surgical Implants [UNS R30035]	Contact person
8–81		ASTM F1609–03 Standard Specification for Calcium Phosphate Coatings for Implantable Materials	Contact person
11–81	8–157	ISO 9583:1993 Implants for Surgery—Non-Destructive Testing—Liquid Penetrant Inspection of Metallic Surgical Implants	Transferred
8–82	8–158	ASTM F1713–08 Standard Specification for Wrought Titanium–13 Niobium–13 Zirconium Alloy for Surgical Implant Applications (UNS R58130)	Withdrawn and replaced with newer year version
11–82	8–159	ISO 9584:1993 Implants for Surgery—Non-Destructive Testing—Radiographic Examination of Cast Metallic Surgical Implants	Transferred
8–86		ASTM F1926–03 Standard Test Method for Evaluation of the Environmental Stability of Calcium Phosphate Coatings	Relevant guidance
8–88		ASTM F2024–00 Standard Practice for X-Ray Diffraction Determination of Phase Content of Plasma-Sprayed Hydroxyapatite Coatings	Relevant guidance
8–98	8–162	ASTM F451–99a(2007)e1 Standard Specification for Acrylic Bone Cement	Withdrawn and replaced with newer year version
8–104		ASTM F1108–04 Standard Specification for Titanium–6Aluminum–4Vanadium Alloy Castings for Surgical Implants (UNS R56406)	Contact person
8–108		ASTM F1295–05 Standard Specification for Wrought Titanium–6 Aluminum–7 Niobium Alloy for Surgical Implant Applications (UNS R56700)	Contact person
8–110		ASTM F1377–04 Standard Specification for Cobalt–28 Chromium–6 Molybdenum Powder for Coating of Orthopedic Implants (UNS R30075)	Contact person
8–112		ASTM F1044–05 Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings	Relevant guidance
8–113		ASTM F1147–05 Standard Test Method for Tension Testing of Calcium Phosphate and Metal Coatings	Relevant guidance
8–119		ASTM F688–05 Standard Specification for Wrought Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035)	Contact person

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
8–120	8–160	ASTM F0560–07 Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R05200, UNS R05400)	Withdrawn and replaced with newer year version
8–123		ISO 5832–5:2005 Implants for Surgery—Metallic Materials—Part 5: Wrought Cobalt-Chromium-Tungsten-Nickel Alloy	Contact person
8–127		ISO 5834–2:2006 Implants for Surgery—Ultra-high-molecular-weight polyethylene—Part 2: Moulded Forms	Relevant guidance
8–129		ASTM F67–06 Standard Specification for Unalloyed Titanium for Surgical Implant Applications (UNS R50250, UNS R50400, UNS R50550, UNS R50700)	Contact person
8–130		ASTM F620–06 Standard Specification for Alpha Plus Beta Titanium Alloy Forgings for Surgical Implants	Contact person
8–131		ASTM F799–06 Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539)	Contact person
8–132		ASTM F1088–04ae1 Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation	Contact person
8–137		ASTM F0075–07 Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Castings and Casting Alloy for Surgical Implants (UNS R30075)	Contact person
8–138		ASTM F0745–07 Standard Specification for 18 Chromium–12.5 Nickel–2.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications	Contact person
8–139		ASTM F1314–07 Standard Specification for Wrought Nitrogen Strengthened 22 Chromium - 13 Nickel - 5 Manganese - 2.5 Molybdenum Stainless Steel Alloy Bar and Wire for Surgical Implants (UNS S20910)	Contact person
8–142		ASTM F1978–00(2007)e2 Standard Test Method for Measuring Abrasion Resistance of Metallic Thermal Spray Coatings by Using the Taber Abraser	Relevant guidance
8–144		ASTM F0754–00 Standard Specification for Implantable Polytetrafluoroethylene (PTFE) Polymer Fabricated in Sheet, Tube and Rod Shapes	Contact person
8–145		ASTM F0090–07 Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	Contact person
8–147		ASTM F0562–07 Standard Specification for Wrought 35Cobalt–35Nickel–20Chromium–10Molybdenum Alloy for Surgical Implant Applications (UNS R30035)	Contact person
8–149		ISO 5832–1:2007 Implants for Surgery—Metallic Materials—Part 1: Wrought Stainless Steel	Contact person
8–150		ISO 5832–9:2007 Implants for Surgery—Metallic Materials—Part 9: Wrought High Nitrogen Stainless Steel	Contact person
8–151		ISO 5832–12:2007 Implants for Surgery—Metallic Materials—Part 12: Wrought Cobalt-Chromium-Molybdenum Alloy	Contact person
8–152		ASTM F1537–07 Standard Specification for Wrought Cobalt–28Chromium–6Molybdenum Alloys for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539)	Contact person

I. OB-GYN/Gastroenterology

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
9–4		IEC 60601–2–16 (1998) Medical Electrical Equipment—Part 2–16: Particular Requirements for the Safety of Haemodialysis, Haemodiafiltration and Haemofiltration Equipment	Relevant guidance and Contact person
9–6		IEC 60601–2–36 (1997) Medical Electrical Equipment—Part 2–36: Particular Requirements for the Safety of Equipment for Extracorporeally Induced Lithotripsy	Title, Relevant guidance, CFR Citation, and Product Codes
9–7		IEC 61846 (1998) Ultrasonics—Pressure Pulse Lithotripters—Characteristics of Fields	Relevant guidance, CFR Citation, and Product Codes
9–21		ISO 8600–4:1997 Optics and Optical Instruments—Medical Endoscopes and Certain Accessories—Part 4: Determination of Maximum Width of Insertion Portion	Relevant guidance
9–23		ASTM F1518–00 Standard Practice for Cleaning and Disinfection of Flexible Fiberoptic and Video Endoscopes Used in the Examination of the Hollow Viscera	Relevant guidance, CDRH Office and Division associated with recognized standard
9–25		AAMI / ANSI HF18:2001 Electrosurgical Devices	Withdrawn
9–28	9–47	ANSI/AAMI RD16:2007 Cardiovascular Implants and Artificial Organs—Hemodialyzers, Hemodiafilters, Hemofilters, and Hemoconcentrators	Withdrawn and replaced with newer version
9–29	9–48	AAMI / ANSI RD17 :2007 Cardiovascular Implants and artificial organs—Extracorporeal Blood Circuit for Hemodialyzers, Hemodiafilters, and Hemofilters	Withdrawn and replaced with newer version
9–32		ASTM D3492–03 Standard Specification for Rubber Contraceptives (Male Condoms)	Relevant guidance
9–34		ISO 4074:2002/Cor.1:2003(E) Natural Latex Rubber Condoms—Requirements and Test Methods, Technical Corrigendum 1	Relevant guidance
9–37		ISO 8600–1:2005 Optics and Photonics—Medical Endoscopes and Endotherapy Devices—Part 1: General Requirements ISO 8600–1:2005	Relevant guidance
9–38		ISO 8600–3:1997 Amendment 1 2003, Optics and Optical Instruments—Medical Endoscopes and Endoscopic Accessories Part 3: Determination of Field of View and Direction of View of Endoscopes with Optics	Relevant guidance
9–39		ISO 8600–5:2005 Optics and Photonics—Medical Endoscopes and Endotherapy Devices—Part 5: Determination of Optical Resolution of Rigid Endoscopes with Optics	Relevant guidance
9–40		ISO 8600–6:2005 Optics and Photonics—Medical Endoscopes and Endotherapy Devices—Part 6: Vocabulary	Relevant guidance
9–41		ASTM D6324–05 Standard Test Methods for Male Condoms Made from Synthetic Materials	Relevant guidance
9–42		IEC 60601–2–18 (1996) Amendment 1 2000 Medical electrical equipment—Part 2: Particular Requirements for the Safety of Endoscopic Equipment	Relevant guidance
9–43		ISO 16038:2005 Rubber Condoms—Guidance on the Use of ISO 4074 in the Quality Management of Natural Rubber Latex Condoms	Relevant guidance
J. Ophthalmic			
10–21		ISO 11979–2:1999 Ophthalmic Implants—Intraocular Lenses—Part 2: Optical Properties and Test Methods	Withdrawn

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
10–23		ISO 11981:1999 Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Determination of Physical Compatibility of Contact Lens Care Products With Contact Lenses	Withdrawn
10–42		ISO 11979–2:1999/Corrigendum1:2003 Ophthalmic Implants—Intraocular Lenses—Part 2: Optical Properties and Test Methods	Extent of recognition and Process impacted
10–44		ISO 11981:1999/Corrigendum1:2005 Ophthalmic Optics—Contact Lenses and Contact Lens Car Products—Determination of Physical Compatibility of Contact Lens Care Products with Contact Lenses	Relevant guidance and Process impacted
K. Orthopedic			
11–73		ISO 5838–1:1995 Implants for Surgery—Skeletal Pins and Wires—Part 1: Material and Mechanical Requirements	Type of standard and Contact person
11–74		ISO 5838–2:1991 Implants for Surgery—Skeletal Pins and Wires—Part 2: Steinmann Skeletal Pins—Dimensions	Type of standard and Contact person
11–75		ISO 5838–3:1993 Implants for Surgery—Skeletal Pins and Wires—Part 3: Kirschner Skeletal Wires	Type of standard and Contact person
11–79		ISO 7206–8:1995 Implants for Surgery—Partial and Total Hip Joint Prostheses—Part 8: Endurance Performance of Stemmed Femoral Components with Application of Torsion	Type of standard, CFR Citation, Product codes and Relevant guidance
11–80		ISO 8828:1988 Implants for Surgery—Guidance on Care and Handling of Orthopaedic Implants	Contact person Processes Impacted
11–81	8–157	ISO 9583:1993 Implants for Surgery—Non-Destructive Testing—Liquid Penetrant Inspection of Metallic Surgical Implants	Transferred
11–82	8–159	ISO 9584:1993 Implants for Surgery—Non-Destructive Testing—Radiographic Examination of Cast Metallic Surgical Implants	Transferred
11–155		ISO 7207–2:1998 Implants for Surgery—Components for Partial and Total Knee Joint Prostheses—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastics Materials	Type of standard and Relevant guidance
11–164	11–203	ASTM F1541–02(2007) Standard Specification and Test Methods for External Skeletal Fixation Devices	Withdrawn and replaced with newer version
11–166	11–204	ASTM F0897–02(2007) Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws	Withdrawn and replaced with newer version
11–168		ASTM F1781–03 Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants	Type of standard
11–171		ASTM F1814–97a(2003) Standard Guide for Evaluating Modular Hip and Knee Joint Components	Type of standard and Relevant guidance
11–172		ASTM F1798–97(2003) Standard Guide for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis Implants	Type of standard and Relevant guidance
11–175		ASTM F1582–98(2003) Standard Terminology Relating to Spinal Implants	Type of standard, CFR Citation, Product codes and Relevant guidance
11–177	11–205	ASTM F1264–03(2007) Standard Specification and Test Methods for Intramedullary Fixation Devices	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
11–178		ASTM F1440–92(2002) Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components Without Torsion	Processes impacted, Type of standard, CFR Citation, Product codes and Relevant guidance
11–179		ASTM F2068–03 Standard Specification for Femoral Prostheses—Metallic Implants	Processes impacted, Type of standard, CFR Citation, Product codes and Relevant guidance
11–180		ASTM F0366–04 Standard Specification for Fixation Pins and Wires	Type of standard and Contact person
11–181		ASTM F1717–04 Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model	Type of standard and Relevant guidance
11–182	11–206	ASTM F1800–07 Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements	Withdrawn and replaced with newer version
11–183		ASTM F1875–98(2004) Standard Practice for Fretting Corrosion Testing of Modular Implant Interfaces: Hip Femoral Head-Bore and Cone Taper Interface	Type of standard, CFR Citations, Product codes and Relevant guidance
11–184		ISO 8827:1988 Implants for surgery—Staples with Parallel Legs for Orthopaedic Use—General Requirements	Type of standard and Contact person
11–185		ASTM F2267–04 Standard Test Method for Measuring Load Induced Subsidence of an Intervertebral Body Fusion Device Under Static Axial Compression	CFR Citations, Product codes and Relevant guidance
11–186		ASTM F2077–03 Test Methods for Intervertebral Body Fusion Devices	Type of standard, CFR Citations, Product codes and Relevant guidance
11–187	11–207	ASTM F2193–02(2007) Standard Specifications and Test Methods for Components Used in the Surgical Fixation of the Spinal Skeletal System	Withdrawn and replaced with newer version
11–188		ISO 14243–1:2002 Implants for Surgery—Wear of Total Knee-Joint Prostheses—Part 1: Loading and Displacement Parameters for Wear-Testing Machines With Load Control and Corresponding Environmental Conditions for Test	Type of standard, CFR Citations and Product codes
11–189		ISO 14243–2:2000 Implants for Surgery—Wear of Total Knee-Joint Prostheses—Part 2: Methods of Measurement	Type of standard, Extent of recognition, CFR Citations and Product codes
11–190		ISO 14243–3:2004 Implants for Surgery—Wear of Total Knee-Joint Prostheses—Part 3: Loading and Displacement Parameters for Wear-Testing Machines With Displacement Control and Corresponding Environmental Conditions for Test	Type of standard, CFR Citations and Product codes
11–191		ISO 14879–1:2000 Implants for Surgery—Total Knee-Joint Prostheses—Part 1: Determination of Endurance Properties of Knee Tibial Trays	Type of standard
11–192		ASTM F1223–05 Standard Test Method for Determination of Total Knee Replacement Constraint	Type of standard CFR Citations and Product codes
11–194	11–208	ISO 14630:2008 Non-Active Surgical Implants—General Requirements—3d Edition	Withdrawn and replaced with newer version
11–195		ASTM F1612–95(2005) Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components with Torsion	Type of standard, CFR Citations, Product codes and Relevant guidance
11–196		ASTM F1672–95(2005) Standard Specification for Resurfacing Patellar Prosthesis	Type of standard and Relevant guidance

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
11–197		ASTM F0983–86(2005) Standard Practice for Permanent Marking of Orthopaedic Implant Components	Contact person and Processes impacted
11–198		ASTM F0382–99(2003)e1 Standard Specification and Test Method for Metallic Bone Plates	Type of standard and Contact person
11–199		ASTM F0565–04 Standard Practice for Care and Handling of Orthopedic Implants and Instruments	Contact person and Processes impacted
11–200	11–209	ASTM F2083–07 Standard Specification for Total Knee Prosthesis	Withdrawn and replaced with newer version
11–201		ASTM F0564–02(2006) Standard Specification and Test Methods for Metallic Bone Staples	Contact person
11–202	11–210	ASTM F0543–07 Standard Specification and Test Methods for Metallic Medical Bone Screws	Withdrawn and replaced with newer version
L. Physical Medicine			
16–19		ISO 7176–4:1997 Wheelchairs—Part 4: Energy Consumption of Electric Wheelchairs and Scooters for Determination of Theoretical Distance Range	Contact person and Type of standard
16–20		ISO 7176–5:1986 Wheelchairs—Part 5: Determination of Overall Dimensions, Mass and Turning Space	Contact person and Type of standard
16–23		ISO 7176–10:1988 Wheelchairs—Part 10: Determination of Obstacle-Climbing Ability of Electric Wheelchairs	Contact person and Type of standard
16–24		ISO 7176–11:1992 Wheelchairs—Part 11: Test Dummies	Contact person and Type of standard
16–25		ISO 7176–13:1989 Wheelchairs—Part 13: Determination of Coefficient of Friction of Test Surfaces	Contact person and Type of standard
16–26		ISO 7176–14:1997 Wheelchairs—Part 14: Power and Control Systems for Electric Wheelchairs—Requirements and Test Methods	Contact person and Type of standard
16–27		ISO 7176–15:1996 Wheelchairs—Part 15: Requirements for Information Disclosure, Documentation and Labeling	Contact person and Type of standard
16–28		ISO 7176–16: 1997 Wheelchairs—Part 16: Resistance to Ignition of Upholstered Parts—Requirements and Test Methods	Contact person and Type of standard
16–29		ISO 7176–6:2001 Wheelchairs—Part 6: Determination of Maximum Speed, Acceleration and Deceleration of Electric Wheelchairs	Contact person and Type of standard
16–30		ISO 7176–9:2001 Wheelchairs—Part 9: Climatic Tests for Electric Wheelchairs	Contact person and Type of standard
16–31		ANSI/RESNA WC/Volume 1–1998 Section 1: Determination of Static Stability	Contact person and Type of standard
16–32		ANSI/RESNA WC/Volume 2–1998 Section 2: Determination of Dynamic Stability of Electric Wheelchairs	Contact person and Type of standard
16–33		ANSI/RESNA WC/Volume 2–1998 Section 3: Test Methods and Requirements for the Effectiveness of Brakes	Contact person and Type of standard
16–34		ANSI/RESNA WC/Volume 2–1998 Section 4: Determination of Energy Consumption of Electric Wheelchairs	Contact person and Type of standard
16–35		ANSI/RESNA WC/Volume 1–1998 Section 5: Determination of Overall Dimensions, Mass, and Turning Space—Wheelchair	Contact person and Type of standard

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
16–36		ANSI/RESNA WC/Volume 2–1998 Section 6: Determination of Maximum Speed, Acceleration, and Retardation of Electric Wheelchairs	Contact person and Type of standard
16–37		ANSI/RESNA WC/Volume 1–1998 Section 7: Wheelchairs - Determination of Seating and Wheel Dimensions	Contact person and Type of standard
16–38		ANSI/RESNA WC/Volume 1–1998 Section 8: Wheelchairs—Static, Impact and Fatigue Strength Tests	Contact person and Type of standard
16–39		ANSI/RESNA WC/Volume 2 - 1998 Section 9: Climatic Tests for Electric Wheelchairs	Contact person and Type of standard
16–40		ANSI/RESNA WC/Volume 2 - 1998 Section 10: Determination of the Obstacle-Climbing Ability of Electric Wheelchairs	Contact person and Type of standard
16–41		ANSI/RESNA WC/Volume 1 - 1998 Section 11: Wheelchairs—Test Dummies	Contact person and Type of standard
16–42		ANSI/RESNA WC/Volume 1 - 1998 Section 13: Determination of Coefficient of Friction of Test Surfaces	Contact person and Type of standard
16–43		ANSI/RESNA WC/Volume 2 - 1998 Section 14: Wheelchairs—Testing of Power and Control Systems for Electric Wheelchairs	Contact person and Type of standard
16–44		ANSI/RESNA WC/Volume 1 - 1998 Section 15: Wheelchairs—Requirements for Information Disclosures, Documentation and Labeling	Contact person and Type of standard
16–45		ANSI/RESNA WC/Volume 1 - 1998 Section 16: Wheelchairs—Determination of Flammability	Title change, Contact person and Type of standard
16–46		ANSI/RESNA WC/Volume 1 - 1998 Section 20: Wheelchairs—Determination of the Performance of Stand-Up Wheelchairs	Contact person and Type of standard
16–47		ANSI/RESNA WC/Volume 1 - 1998 Section 22: Wheelchairs—Set Up Procedures	Contact person and Type of standard
16–48		ANSI/RESNA WC/Volume 1 - 1998 Section 93: Maximum Overall Dimensions	Contact person and Type of standard
16–49		ANSI/RESNA WC/Volume 1 - 1998 Section 0: Nomenclature, Terms, and Definitions	Contact person and Type of standard
16–50		ISO 7176–3:2003 Wheelchairs—Part 3: Determination of Effectiveness of Brakes	Contact person and Type of standard
16–158		ISO 7176–1:1999 Wheelchairs—Part 1: Determination of Static Stability	Contact person and Type of standard
16–159		ISO 7176–2:2001 Wheelchairs—Part 2: Determination of Dynamic Stability of Electric Wheelchairs	Contact person and Type of standard
M. Radiology			
12–17		NEMA MS 8–1993 (2000), Characterization of the Specific Absorption Rate for Magnetic Resonance Imaging Systems	Relevant guidance and Contact person
12–61	12–177	UL 122 (2007): Standard for Photographic Equipment—Ed. 5.0	Withdrawn and replaced with newer version
12–64	12–178	IEC 60601–2–45 Ed. 2.0, (2006) Medical Electrical Equipment—Part 2–45: Particular Requirements for the Safety of Mammographic X-ray Equipment and Mammographic Stereotactic Devices	Withdrawn and replaced with newer version

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
12–69		NEMA MS 6–1991 (R2000) Characterization of Special Purpose Coils for Diagnostic Magnetic Resonance Images	Relevant guidance, Contact person and CFR Citations
12–95		NEMA MS 2–2003 Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Images	Relevant guidance and Contact person
12–96		NEMA MS 3–2003 Determination of Image Uniformity in Diagnostic Magnetic Resonance Images	Relevant guidance and Contact person
12–97		NEMA MS–1–2001 Determination of Signal-to-Noise Ratio (SNR) in Diagnostic Magnetic Resonance Imaging	Relevant guidance, Contact person and CFR Citations
12–103	12–179	ANSI / IESNA RP–27.3–2007 Recommended Practice for Photobiological Safety for Lamps—Risk Group Classification and Labeling	Withdrawn and replaced with newer version
12–120		IEC 60601–2–44 (2002–11): Medical Electrical Equipment—Part 2–44: Particular Requirements for the Safety of X-ray Equipment for Computed Tomography—Ed. 2.1	Relevant guidance and CFR Citations
12–123	12–180	IEC 61689:2007 Ultrasonics—Physiotherapy Systems—Field Specifications and Methods of Measurement in the Frequency Range 0,5 MHz to 5 MHz Ed. 2.0	Withdrawn and replaced with newer version
12–125		NEMA MS 5–2003 Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging	Relevant guidance and Contact person
12–129	12–181	NU 1–2007 Performance Measurements of Gamma Cameras	Withdrawn and replaced with newer version
12–131	12–184	IEC 61217 2002 Consolidated Ed. 1.1, 2007 Amendment 2 Ed. 1.0 Radiotherapy Equipment—Coordinates, Movements, and Scales	Withdrawn and replaced with newer version
12–150		IEC / ISO 10918–1:1994 Technical Corrigendum 1:2005 Information Technology—Digital Compression and Coding of Continuous-Tone Still Images—Part 1: Requirements	Relevant guidance, Contact person, CFR Citations, Product code, and Devices affected
12–151		NEMA MS 4 (2006) Acoustic Noise Measurement Procedure for Diagnosing Magnetic Resonance Imaging Devices	Relevant guidance, Contact person and CFR Citations
12–158		NEMA MS 10–2006 Determination of Local Specific Absorption Rate (SAR) in Diagnostic Magnetic Resonance Imaging	Relevant guidance, Contact person and CFR Citations
12–159		NEMA MS 11–2006 Determination of Gradient-Induced Electric Fields in Diagnostic Magnetic Resonance Imaging	Relevant guidance, Contact person and CFR Citations
12–160		NEMA MS 12–2006 Quantification and Mapping of Geometric Distortion for Special Applications	Relevant guidance, Contact person and CFR Citations
12–161		IEC 60601–2–33 (2006), Medical Electrical Equipment—Part 2–33: Particular Requirements for the Safety of Magnetic Resonance Equipment for Medical Diagnosis	Relevant guidance and Contact person
12–164	12–182	IEC 60601–2–37:2007 Medical Electrical Equipment—Part 2–37: Particular Requirements for the Basic Safety and Essential Performance of Ultrasonic Medical Diagnostic and Monitoring Equipment	Withdrawn and replaced with newer version
12–165		NEMA XR 22–2006 "Quality Control Manual" Template for Manufacturers of Displays and Workstations Labeled for Final Interpretation in Full-Field Digital Mammography	Relevant guidance
12–166		NEMA XR 23–2006 "Quality Control Manual" Template for Manufacturers of Hardcopy Output Devices Labeled for Final Interpretation in Full-Field Digital Mammography	Relevant guidance
12–168		IEC 60825–1 Ed. 2.0 (2007) Safety of Laser Products—Part 1: Equipment Classification, and Requirements	Contact person and Processes impacted

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
12–169		IEC 60601–2–22 Ed. 3.0 (2007) Medical Electrical Equipment—Part 2–22: Particular Requirements for Basic Safety and Essential Performance of Surgical, Cosmetic, Therapeutic and Diagnostic Laser Equipment	Contact person, Processes impacted and Title
12–170	12–183	NEMA PS 3.1 - 3.18 (2008) Digital Imaging and Communications in Medicine (DICOM) Set	Withdrawn and replaced with newer versions
5–7	12–185	IEC 60601–1–3 2008 Edition 2.0 Medical Electrical Equipment—Part 1–3:General Requirements for Basic Safety and Essential Performance—Collateral Standard: Radiation Protection in Diagnostic X-ray Equipment	Transferred
N. Software/Informatics			
13–4		ANSI/UL 1998, Software in Programmable Components	CFR Citations, Product codes, Relevant guidance and Extent of recognition
13–5		IEEE 1074:1997, Standard for Developing Software Life Cycle Processes	Withdrawn
13–8		IEC 62304 Ed. 1.0, Medical Device Software—Software Life Cycle Processes	CFR Citations, Product codes, Relevant guidance, and Extent of recognition
7–59	13–9	CLSI AUTO2–A2 Laboratory Automation: Bar Codes for Specimen Container Identification; Approved Standard	Transferred
7–60	13–10	CLSI AUTO1–A Laboratory Automation: Specimen Container/Specimen Carrier; Approved Standard	Transferred
7–61	13–11	CLSI AUTO3–A Laboratory Automation: Communications with Automated Clinical Laboratory Systems, Instruments, Devices, and Information Systems; Approved Standard	Transferred
7–62	13–12	CLSI AUTO4–A Laboratory Automation: Systems Operational Requirements, Characteristics, and Information Elements; Approved Standard	Transferred
7–63	13–13	CLSI AUTO5–A Laboratory Automation: Electromechanical Interfaces; Approved Standard	Transferred
7–64	13–14	CLSI POCT1–A2 Point-of-Care Connectivity; Approved Standard	Transferred
7–68	13–15	CLSI GP19–A2 Laboratory Instruments and Data Management Systems: Design of Software User Interfaces and End-User Software Systems Validation, Operation, and Monitoring; Approved Guideline—Second Edition	Transferred
7–114	13–16	CLSI LIS01–A Standard Specification for Low-Level Protocol to Transfer Messages Between Clinical Laboratory Instruments and Computer Systems	Transferred
7–115	13–17	CLSI LIS02–A2 Standard Specification for Transferring Information Between Clinical Instruments and Computer Systems; Approved Standard-Second Edition	Transferred
7–116	13–18	CLSI LIS03–A Standard Guide for Selection of a Clinical Laboratory Information Management System	Transferred
7–117	13–19	CLSI LIS04–A Standard Guide for Documentation of Clinical Laboratory Computer Systems	Transferred
7–118	13–20	CLSI LIS05–A Standard Specification for Transferring Clinical Observations Between Independent Computer Systems	Transferred
7–119	13–21	CLSI LIS06–A Standard Practice for Reporting Reliability of Clinical Laboratory Information Systems	Transferred

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
7–120	13–22	CLSI LIS07–A Standard Specification for Use of Bar Codes on Specimen Tubes in the Clinical Laboratory	Transferred
7–121	13–23	CLSI LIS08–A Standard Guide for Functional Requirements of Clinical Laboratory Information Management Systems	Transferred
7–122	13–24	CLSI LIS09–A Standard Guide for Coordination of Clinical Laboratory Services within the Electronic Health Record Environment and Networked Architectures	Transferred
O. Sterility			
14–24		AAMI/ANSI/ISO 11134:1993 Sterilization of Health Care Products—Requirements for Validation and Routine Control-Industrial Moist Heat Sterilization	Withdrawn
14–53		AAMI/ANSI ST66:1996 Sterilization of Health Care Products—Chemical Indicators—Part 2: Indicators for Air Removal Test Sheets and Packs	Withdrawn
14–54		AAMI/ANSI/ISO 11737–2:1998 Sterilization of Medical Devices—Microbiological Methods—Part 2: Tests of Sterility Performed in the Validation of a Sterilization Process	CFR Citations, Product codes and Devices affected
14–55		AAMI/ANSI/ISO 14160:1998 Sterilization of Single-Use Medical Devices Incorporating Materials of Animal Origin—Validation and Routine Control of Sterilization by Liquid Chemical Sterilants	Relevant guidance
14–60		ASTM F1327:1998 Standard Terminology Relating to Barrier Materials for Medical Packaging	Withdrawn
14–63		ASTM F1886: 1998 (2004) Standard Test Method for Determining Integrity of Seals for Medical Packaging by Visual Inspection	CFR Citations and Product codes
14–64		ASTM F1929:1998 (2004) Standard Test Method for Detecting Seal Leaks in Porous Medical Packaging by Dye Penetration	CFR Citations and Product codes
14–70		AAMI/ANSI/ISO 14161:2000 Sterilization of Health Care Products—Biological Indicators—Guidance for the Selection, Use and Interpretation of Results, 2ed.	CFR Citations, Product codes and Devices affected
14–76		AAMI/ANSI/ISO 10993–7:1995 (R) 2001 Biological Evaluation of Medical Devices—Part 7: Ethylene Oxide Sterilization Residuals	CFR Citations, Product codes and Contact person
14–88		AAMI/ANSI/ISO 14937:2000 Sterilization of Health Care Products—General Requirements for Characterization of a Sterilizing Agent and the Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	CFR Citations and Product codes
14–90	14–256	ASTM F2095–07 Standard Test Methods for Pressure Decay Leak Test for Nonporous Flexible Packages With and Without Restraining Plates	Withdrawn and replaced with newer version
14–116		AAMI ST72:2002 Bacterial endotoxins—Test Methodologies, Routine Monitoring, and Alternatives to Batch Testing	CFR Citations, Product codes, Type of standard, Guidance and Extent of recognition
14–120		ASTM D3078:2002 Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission	CFR Citations, Product codes and Type of standard
14–123		ASTM F2096–04 Standard Test Method for Detecting Gross Leaks in Medical Packaging by Internal Pressurization (Bubble Test)	CFR Citations, Product codes, CDRH Office and Division associated with recognized standard

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
14–135		AAMI/ANSI ST63:2002 Sterilization of Health Care Products—Requirements for the Development, Validation and Routine Control of an Industrial Sterilization Process for Medical Devices—Dry Heat	CFR Citations, Product codes and Type of standard
14–136		AAMI/ANSI ST67:2003 Sterilization of Health Care Products—Requirements for Products Labeled 'Sterile' 1st Edition	CFR Citations, Product codes and Guidance
14–138		ISO 13408–2:2003 Aseptic Processing of Health Care Products—Part 2: Filtration	CFR Citations, Product codes, Type of standard and Guidance
14–139		ISO 14644–1:1999 Cleanrooms and Associated Controlled Environments—Part 1: Classification of Air Cleanliness	CFR Citations, Product codes and Type of standard
14–140		ISO 14644–2:2000 Cleanrooms and Associated Controlled Environments—Part 2: Specification for Testing and Monitoring to Prove Continued Compliance With ISO 14644–1	CFR Citations, Product codes and Type of standard
14–141		ISO 14644–4:2001 Cleanrooms and Associated Controlled Environments—Part 4: Design, Construction and Startup	CFR Citations, Product codes and Type of standard
14–142		ISO 14698–1:2003 Cleanrooms and Associated Controlled Environments—Biocontamination Control—Part 1: General Principles and Methods	CFR Citations, Product codes and Type of standard
14–143		ISO 14698–2:2003 Cleanrooms and Associated Controlled Environments—Biocontamination Control—Part 2: Evaluation and Interpretation of Biocontamination Data	CFR Citations, Product codes and Type of standard
14–148		ASTM F2250–03 Standard Practice for Evaluation of Chemical Resistance of Printed Inks and Coatings on Flexible Packaging Materials	CFR Citations, Product codes and Type of standard
14–149		ASTM F2251–03e1 Standard Test Method for Thickness Measurement of Flexible Packaging Material	CFR Citations, Product codes and Type of standard
14–150		ASTM F2252–03 Standard Practice for Evaluating Ink or Coating Adhesion to Flexible Packaging Materials Using Tape	CFR Citations, Product codes and Type of standard
14–164		AAMI/ANSI ST81:2004 Sterilization of Medical Devices—Information to be Provided by the Manufacturer for the Processing of Resterilizable Devices	CFR Citations, Product codes, and Devices affected
14–165		ISO 14644–5:2004 Cleanrooms and Associated Controlled Environments—Part 5: Operations	CFR Citations, Product codes and Type of standard
14–166		ISO 14644–7:2004 Cleanrooms and Associated Controlled Environments—Part 7: Separative Devices (Clean Air Hoods, Gloveboxes, Isolators and Mini-Environments)	CFR Citations, Product codes and Type of standard
14–168	14–245	ASTM F2338–07 Standard Test Method for Nondestructive Detection of Leaks in Packages by Vacuum Decay Method	Withdrawn and replaced with newer version
14–169		ASTM F2391–05 Standard Test Method for Measuring Package and Seal Integrity Using Helium as Tracer Gas	CFR Citations, Product codes and Type of standard
14–170		ASTM F2475–05 Standard Guide for Biocompatibility Evaluation of Medical Device Packaging Materials	CFR Citations, Product codes and Type of standard
14–191		ISO 13408–4:2005 Aseptic Processing of Health care Products—Part 4: Clean-in-Place Technologies	CFR Citations, Product codes, Type of standard and Relevant guidance
14–193		AAMI/ANSI/ISO 11607–1:2006 Packaging for terminally Sterilized Medical Devices—Part 1: Requirements for Materials, Sterile Barrier Systems and Packaging Systems, 3d ed.	CFR Citations, Product codes, Devices affected and Relevant guidance

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
14–194		AAMI/ANSI/ISO 11607–2:2006 Packaging for Terminally Sterilized Medical Devices—Part 2: Validation Requirements for Forming, Sealing and Assembly Processes, 1st ed.	CFR Citations, Product codes, Devices affected and Relevant guidance
14–197		ASTM F1608:00(2004) Standard Test Method for Microbial Ranking of Porous Packaging Materials (Exposure Chamber Method)	CFR Citations and Product codes
14–199		ASTM D4169–05 Standard Practice for Performance Testing of Shipping Containers and Systems	Related CFR Citations and Product codes
14–202	14–246	USP 31:2008 Biological Indicator for Dry-Heat Sterilization, Paper Carrier	Withdrawn and replaced with newer version
14–203	14–247	USP 31:2008 Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier.	Withdrawn and replaced with newer version
14–204	14–248	USP 31:2008 Biological Indicator for Steam Sterilization, Paper Carrier	Withdrawn and replaced with newer version
14–205	14–249	USP 31:2008 <61> Microbial Limits Test	Withdrawn and replaced with newer version
14–206	14–250	USP 31:2008 <71> Microbiological Tests, Sterility Tests	Withdrawn and replaced with newer version
14–207	14–251	USP 31:2008 <85> Biological Tests and Assays, Bacterial Endotoxin Test (LAL)	Withdrawn and replaced with newer version
14–208	14–252	USP 31:2008 <151> Pyrogen Test (USP Rabbit Test)	Withdrawn and replaced with newer version
14–209	14–253	USP 31:2008 <161> Transfusion and Infusion Assemblies and Similar Medical Devices	Withdrawn and replaced with newer version
14–210	14–254	USP 31:2008 Biological Indicator for Steam Sterilization—Self Contained	Withdrawn and replaced with newer version
14–220		AAMI/ANSI ST79:2006 Comprehensive Guide to Steam Sterilization and Sterility Assurance in Health Care Facilities	Type of Standard
14–221		AAMI/ANSI/ISO TIR 11139:2006 Sterilization of Health Care Products—Vocabulary	CFR Citations, Product codes, Title, Devices affected, and Type of standard
14–222		AAMI/ANSI/ISO 18472:2006 Sterilization of Health Care Products—Biological and Chemical Indicators—Test Equipment	Type of standard
14–223		ANSI/AAMI/ISO 11138–1:2006 Sterilization of Health Care Products—Biological Indicators—Part 1: General Requirements	Type of standard, Guidance and Extent of recognition
14–224		AAMI/ANSI/ISO 11137–1:2006 Sterilization of Health Care Products—Radiation—Part 1: Requirements for Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	CFR Citations, Product codes, and Type of standard
14–225		AAMI/ANSI/ISO 11137–2:2006 Sterilization of Health Care Products—Radiation—Part 2: Establishing the Sterilization Dose	CFR Citations, Product codes and Type of standard
14–226		AAMI/ANSI/ISO 11137–3:2006 Sterilization of Health Care Products—Radiation—Part 3: Guidance on Dosimetric Aspects	CFR Citations, Product codes and Type of standard

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
14–227		AAMI/ANSI/ISO 11737–1:2006 Sterilization of Medical Devices-Microbiological Methods-Part 1: Determination of the Population of Microorganisms on Products, 2d, ed.	CFR Citations, Product codes, Devices affected, CDRH Office and Division associated with recognized standard
14–228		ANSI/AAMI/ISO 11135–1:2007 Sterilization of Health Care Products—Ethylene Oxide—Part 1: Requirements for the Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	CFR Citations, Product codes, Devices affected, and Type of standard
14–229		ASTM F1980–07 Standard Guide for Accelerated Aging of Sterile Barrier Systems for Medical Devices	CFR Citations and Product codes
14–230		ASTM F2203–02(2007) Standard Test Method for Linear Measurement Using Precision Steel Rule	CFR Citations, Product codes and Type of standard
14–231		ASTM F2217–02(2007) Standard Practice for Coating/Adhesive Weight Determination	CFR Citations, Product codes and Type of standard
14–232		ASTM F2227–02(2007) Standard Test Method for Non-Destructive Detection of Leaks in Non-Sealed and Empty Medical Packaging Trays by CO2 Tracer Gas Method	CFR Citations, Product codes and Type of standard
14–233		ASTM F2228–02(2007) Standard Test Method for Non-Destructive Detection of Leaks in Medical Packaging Which Incorporates Porous Barrier Material by CO2 Tracer Gas Method	CFR Citations, Product codes and Type of standard
14–234		ASTM F2097–07 Standard Guide for Design and Evaluation of Primary Flexible Packaging for Medical Products	CFR Citations, Product codes and Type of standard
14–235		ASTM F1140–07 Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages	CFR Citations, Product codes and Type of standard
14–236		ASTM F2054–07 Standard Test Method for Burst Testing of Flexible Package Seals Using Internal Air Pressurization Within Restraining Plates	CFR Citations, Product codes and Type of standard
14–237		ASTM F88–07 Standard Test Method for Seal Strength of Flexible Barrier Materials	CFR Citations, Product codes and Type of standard
14–239		ISO 13408–3:2006 Aseptic Processing of Health Care Products—Part 3: Lyophilization	CFR Citations and Product codes
14–240		ISO 13408–5:2006 Aseptic Processing of Health Care Products—Part 5: Sterilization-in-Place	CFR Citations and Product codes
14–241		ISO 13408–6:2005 Aseptic Processing of Health Care Products—Part 6: Isolator Systems	CFR Citations and Product codes
14–242		ISO 14644–3:2005 Cleanrooms and Associated Controlled Environments—Part 3: Test Methods	CFR Citations and Product codes
14–243		ISO 14644–6:2007 Cleanrooms and Associated Controlled Environments—Part 6: Vocabulary	CFR Citations and Product codes
14–244		ISO 14644–8:2006 Cleanrooms and Associated Controlled Environments—Part 8: Classification of Airborne Molecular Contamination	CFR Citations and Product codes
P. Tissue Engineering			
15–12		ASTM F2103–01(2007)e1 Standard Guide for Characterization and Testing of Chitosan Salts as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Product Applications	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard

TABLE 2.—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
15–5		ASTM F2347–03, Standard Guide for Characterization and Testing of Hyaluronan as Starting Materials Intended for Use in Biomedical and Tissue Engineered Medical Product Applications	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard
15–6		ASTM F2450–04, Standard Guide for Assessing Microstructure of Polymeric Scaffolds for Use in Tissue Engineered Medical Products	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard
15–7		ASTM F2315–03, Standard Guide for Immobilization or Encapsulation of Living Cells or Tissue in Alginate Gels	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard
15–8		ASTM F2064–00(2006), Standard Guide for Characterization and Testing of Alginates as Starting Materials Intended for use in Biomedical and Tissue-Engineered Medical Products Application	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard
15–9		ASTM F2311–06, Standard Guide for Classification of Therapeutic Skin Substitutes	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard
15–10		ASTM F2451–05, Standard Guide for in vivo Assessment of Implantable Devices Intended to Repair or Regenerate Articular Cartilage	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard
15–11		ASTM F2212–02(2007)e1, Standard Guide for Characterization of Type I Collagen as a Starting Material for Surgical Implants and Substrates for Tissue Engineered Medical Products	CFR Citations and Product codes, Relevant guidance, Type of standard and CDRH Office and Division associated with recognized standard

III. Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 020.

TABLE 3.—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of Standard	Reference No. and Date
A. Biocompatibility		
2–127	Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Delayed-Type Hypersensitivity—Amendment 1	ANSI/AAMI BE 78:2002/A1:2006
B. Cardiovascular/Neurology		
3–70	Manual, Electronic or Automated Sphygmomanometers	ANSI/AAMI SP10:2002/A1:2003—Amendment 1 to ANSI/AAMI SP10:2002
3–71	Manual, Electronic and Automated Sphygmomanometers	ANSI/AAMI SP10:2002/A2:2006—Amendment 2 to ANSI/AAMI SP10:2002
C. Dental/ Ear, Nose, and Throat		
4–151	Dentistry—Artificial Teeth for Dental Prostheses	ISO 22112:2005

TABLE 3.—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of Standard	Reference No. and Date
4–152	Metal-Ceramic Dental Restorative Systems	ISO 9693:1999/Amendment 1:2005
4–154	Dentistry—Elastometric Impression Materials-Third Edition	ISO 4823:2000
4–155	Dentistry—Elastomeric Impression Materials Technical Corrigendum 1–Third Edition	ISO 4823:2000 Technical Corrigendum 1:2004
4–156	Dentistry—Elastomeric Impression Materials Amendment 1–Third Edition	ISO 4823:2000 Amendment 1:2007
4–157	Dentistry—Zinc Oxide/Eugenol and Zinc Oxide/Non-eugenol Cements-Third Edition	ISO 3107: 2004
4–158	Dentistry—Soft Lining Materials for Removable Dentures—Part 1: Materials for Short-Term Use Technical Corrigendum 1	ISO 10139–1:2005 Technical Corrigendum 1:2006
D. General Hospital/ General Plastic Surgery		
6–214	Standard Test Method for Human Repeat Insult Patch Testing of Medical Gloves	ASTM D6355–07
E. In Vitro Diagnostic		
7–160	Abbreviated Identification of Bacteria and Yeast; Approved Guideline	CLSI M35–A,
7–161	Laboratory Detection and Identification of Mycobacteria; Proposed Guideline.	CLSI M48–P
7–162	Point-of-Care Monitoring of Anticoagulant Therapy; Approved Guideline	CLSI H49–A
7–163	Body Fluid Analysis for Cellular Composition	CLSI H56–A
7–164	Microwave Device Use in the Histology Laboratory; Approved Guideline	CLSI GP28–A
7–165	Reference Leukocyte (WBC) Differential Count (Proportional) and Evaluation of Instrumental Methods; Approved Standard-Second Edition	CLSI H20–A2
7–166	Fine Needle Aspiration Biopsy (FNAB) Techniques; Approved Guideline—Second Edition	CLSI GP20–A2
7–167	Nongynecologic Cytologic Specimens: Collection and Cytopreparatory Techniques; Approved Guideline	CLSI GP23–A
7–168	Reference Method for Broth Dilution Antifungal Susceptibility Testing of Filamentous Fungi; Approved Standard	CLSI M38–A
F. Materials		
8–161	Standard Test Method for Tension Testing of Nickel-Titanium Superelastic Materials	ASTM F2516–07
G. OB-GYN/Gastroenterology		
9–46	Medical Electrical Equipment—Part 2–2: Particular Requirements for the Safety of High Frequency Surgical Equipment	ANSI/AAMI 60601–2–2:2006
9–49	Concentrates for Hemodialysis	AAMI / ANSI RD61:2006
9–50	Dialysate for Hemodialysis	ANSI/AAMI RD52:2004
9–51	Cardiovascular Implants and Artificial Organs—Haemodialysers, Haemodiafilters, Haemofilters and Haemoconcentrators	ISO 8637:2004
9–52	Cardiovascular Implants and Artificial Organs—Extracorporeal Blood Circuit for Haemodialysers, Haemodiafilters and Haemofilters	ISO 8638:2004
9–53	Standard Practice for Reprocessing of Reusable, Heat-Stable Endoscopic Accessory Instruments (EAI) Used with Flexible Endoscopes	ASTM F1992–99(2007)
9–54	Standard Specification for Rubber Contraceptives—Vaginal Diaphragms	ASTM D6976–08
H. Ophthalmic		
10–56	Ophthalmics Multifocal Intraocular Lenses	ANSI Z80.12–2007

TABLE 3.—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of Standard	Reference No. and Date
10–57	Phakic Intraocular Lenses	ANSI Z80.13–2007
I. Physical Medicine		
16–161	Safety Standard for Platform Lifts and Stairway Chairlifts	ASME A18.1–2005
J. Sterility		
14–255	Standard Terminology Relating to Flexible Barrier Packaging	ASTM F17–07a

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

Persons interested in obtaining a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions [including lists of approved applications and manufacturers' addresses], small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/cdrh/fedregin.html*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 020. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: August 27, 2008.

Daniel G. Schultz,

Director, Center for Devices and Radiological Health.

[FR Doc. E8–20939 Filed 9–8–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0043]
[FDA No. 225–08–8001]

Memorandum of Understanding Between the Food and Drug Administration and the University of Pennsylvania

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the University of Pennsylvania (Penn). The purpose of this MOU is to establish terms of collaboration between FDA and Penn focused primarily but not exclusively, in the areas of translational therapeutics, diagnostics, bioinformatics, new clinical trial models, drug/device co-development, and pharmacoepidemiology. Beyond the collaborations in the traditional academic programs for training, research, and outreach, this MOU will also include collaborations with Penn extended partnerships such as the Institute for Translational Medicine and Therapeutics which includes the Children's Hospital of Philadelphia, the Wistar Institute, and the University of Sciences in Philadelphia.

DATES: The agreement became effective on July 24, 2008.

FOR FURTHER INFORMATION CONTACT:

For FDA: Wendy R. Sanhai, Office of the Commissioner, Office of Scientific and Medical Programs (HF–18), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7867.

For Penn: Glenn N. Gaulton, PENN Medicine, University of Pennsylvania, 421 Curie Blvd., Philadelphia, PA 19104–6160, 215–898–2874.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: September 2, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

BILLING CODE 4160–01–S

FDA Record No. 225-08-8001

Memorandum of Understanding

Between
The United States Food and Drug Administration
And
The University of Pennsylvania

This Memorandum of Understanding (MOU) between the U.S. Food and Drug Administration (FDA) and the University of Pennsylvania (Penn) (FDA or Penn, individually, "Party" and collectively "Parties") is established to formalize the development of collaborative activities between the two parties in the areas of research, education, and outreach. This MOU describes in general terms the basis upon which the parties intend to cooperate in these activities. The MOU does not create binding, enforceable obligations against, or in favor of, either party.

I. Purpose

The purpose of this MOU is to establish the framework for collaboration between FDA and Penn to support their shared interest in advancing the scientific basis for the regulatory approval process and medical product development through: (1) the promotion of a sound working relationship between the FDA and Penn; (2) the exchange of graduate and undergraduate students, faculty, and personnel; and (3) cooperative activities, sponsored research activities, and information exchange in areas such as translational therapeutics, diagnostics, bioinformatics, the development of new clinical trial models, drug/device co-development, and innovative drug therapy-monitoring programs.

The specific goals of the collaboration which are expected to result from this MOU are to advance: (1) the utilization of new technological tools to hasten development of safer, more useful drugs, biologics and medical devices (collectively, "medical products") targeted at individuals rather than populations; (2) the utilization of pharmacoepidemiology to monitor the efficacy, safety and cost-effectiveness of medical products subsequent to their marketing (3) the understanding of co-development processes for companion drug diagnostics for targeted therapies; (4) the entry of new medical products into the marketplace at reduced cost without compromising safety or efficacy; and (5) the quality and quantity of professionals trained in the emerging field of translational medicine and therapeutics.

II. Background

FDA has a primary role in assuring the safety and efficacy of newly approved medical products. In addition, FDA plays a unique role in advancing the translational/applied science that assists US industry and academia in streamlining the medical product development process.

Penn has established an Institute for Translational Medicine and Therapeutics (ITMAT), as a chartered non-profit research and education center. ITMAT is dedicated to research at the interface of basic and clinical science, with a particular focus on the development of new and safer medical products. ITMAT includes its own faculty and investigators focused on clinical and translational research in all schools at Penn, the Children's Hospital of Philadelphia (CHOP), the Wistar Institute, and the University of Sciences in Philadelphia. Examples of key research areas of the ITMAT include neurotherapeutics, systems biology and targeted therapeutics.

III. Agreement

This MOU is intended as a broad vehicle to promote collaboration between FDA and Penn researchers, students, and personnel. As specific topics for joint research and/or collaboration are identified under this MOU they will be conducted under the appropriate formal agreements.

The areas of collaboration will include, but will not be limited to, the following:

A) Translational Therapeutics (the branch of medical research that fosters the connection between basic research and patient care).

At least two areas of collaboration between FDA and Penn relative to translational therapeutics have been identified:

1) Joint research that moves the study of pharmacology from model systems to humans for rational dose selection and safe delivery of medical products, including the integration of hypothesis driven and unbiased science-based approaches to foster individual medical product selection and risk management.

2) Regular workshops and conferences to integrate translational therapeutics and pharmacoepidemiology to predict and refine strategies for monitoring approved medical products in the postmarketing phase to ensure safety.

B) Biomarkers

Several areas of potential collaboration between FDA and Penn relative to biomarkers and new tools in bioinformatics have been identified, including:

1) Joint research programs may be formed by scientists from their respective institutions with mutual complementary interests in areas such as the study of environmental and

genetic factors that contribute to variation in human responses to medical products. This research may be based on collaborative analysis of data and the literature, or experimental work. The partners will disseminate information and enhance the visibility of the collaboration through mutually agreed vehicles, including training activities, meetings, symposia and journal publications.

2) Joint participation and / or sponsorship of conferences on issues related to inter-individual differences in the response to medical products, and the need to develop new approaches to clinical trial design and analysis.

C) Pharmacoepidemiology

FDA and Penn will work collaboratively to develop a medical product therapy-monitoring program assessing utilization, clinical effectiveness, safety, and prescription guideline adherence.

D) Curriculum Development and Training

The growing complexity of medical product discovery, development, approval and regulation requires individuals cross-trained in the new interdisciplinary biomedical science of translational therapeutics, requiring the evaluation of data derived from studies in molecular pharmacology, pharmacogenomics, medical informatics, pharmaceutics, clinical pharmacology, and pharmacoepidemiology, among others. There is a significant shortage of individuals cross-trained in these fields and available for employment by the FDA, academia or industry. Working collaboratively, FDA and Penn propose to develop a translational therapeutics curriculum, building upon the ITMAT's Masters in Translational Research (MTR) degree program. The goal of this effort will be to develop the capacity to create satellite activities at other academic medical centers throughout the United States, to train credentialed experts in the emerging field of translational medicine and therapeutics and clinical pharmacoepidemiology.

IV. General Provisions

Nothing in this MOU alters the statutory authorities or obligations of FDA. This MOU is intended to facilitate the cooperative efforts of the Parties. The MOU does not create binding, enforceable obligations against, or in favor of, either party.

1) Information Sharing: Proprietary or non-public information will not be disclosed under this MOU unless such disclosure is governed by appropriate, separate, written Confidentiality Disclosure Agreements ("CDAs") and to the extent such disclosure is permitted by Federal law.

2) Conflict of Interest: Participants from the parties will abide by the conflict of interest policies and rules of their respective institutions (i.e., participants from Penn will need to abide by Penn's conflict of interest policies and rules and

participants from FDA need to abide by Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch, and FDA's conflict of interest policies and rules)

V. Resource Obligations

Execution of this MOU will not result in the obligation of federal funds, personnel, or other resources by FDA. Nothing in this Agreement shall obligate HHS, or FDA to any current or future expenditure of resources in advance of the availability of appropriations from Congress.

VI. Term, Termination and Modifications

1) This MOU constitutes the entire agreement between the Parties as to the matters described herein, and there are no representations, warranties, agreements, or understandings, expressed or implied, written or oral, between the Parties relating to the subject matter of this MOU that are not fully expressed herein.

2) This MOU may be modified only upon the mutual written consent of both Parties. Modifications must be signed by the original signatories to this MOU, or by their designees or successors. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this MOU.

3) This MOU, when accepted by the Parties, will remain in effect for five (5) years from the effective date, unless modified or terminated. This MOU will become effective on the date of the last signatory to the agreement.

4) This MOU may be terminated by written notice by either of the Parties at any time, with or without cause, and without incurring any liability or obligation to the terminated Party, by giving the other party at least thirty (30) days prior written notice of termination.

5) Any notice or other communication required or permitted under this MOU shall be in writing and shall be deemed effective on the date it is received by the receiving Party.

6) This agreement shall be governed by applicable federal law.

7) This MOU shall be publicly available.

VII. Name and Address of Participating Parties

A. Penn
University of Pennsylvania
3451 Walnut Street Philadelphia, PA 19104

B. FDA
U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

VIII. Liaison Officers

A. For FDA

Wendy R. Sanhai, Ph.D.
Senior Scientific Advisor
Office of the Commissioner, FDA
5600 Fishers Lane, Suite 6A-08
Rockville, MD 20857
Email: wendy.sanhai@fda.hhs.gov
Phone: 301-827-7867
Fax: 301-443-9718

B. For Penn

Glenn N. Gaulton, PhD
Vice Dean
Research & Research Training
PENN Medicine
University of Pennsylvania
354 BRB II/III
421 Curie Boulevard
Philadelphia, PA 19104-6160
Email: gaulton@mail.med.upenn.edu
Phone: 215-898-2874
Fax: 215- 573-7945

FDA Record No. 225-08-8001

AGREED TO:

FOR THE UNIVERSITY OF PENNSYLVANIA

BY: _____ 7/18/08
Signature of authorized representative **Date**

Arthur H. Rubenstein, M.B.B.Ch.
Executive Vice President
University of Pennsylvania for the Health System
Dean
School of Medicine

FOR THE UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 7/24/08
Signature of authorized representative **Date**

Frank M. Torti, M.D., MPH
Chief Scientist and Deputy Commissioner
Food and Drug Administration

[FR Doc. E8–20932 Filed 9–8–08; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Nurse Faculty Loan Program-Program Specific Data Form—In Use Without Approval

The Nurse Faculty Loan Program (NFLP)-Program Specific Form is for electronic submission of required data. This clearance request is for approval of the NFLP-Program Specific Data Form to collect the data required to make award determinations for eligible applicants.

The Nurse Faculty Loan Program (NFLP) is authorized under Title VIII of the Public Health Service Act, Section 846A, as amended by the Nurse Reinvestment Act, Public Law 107–205 to increase the number of qualified nurse faculty. The HHS, acting through HRSA, may enter into an agreement with schools of nursing and make an award to establish and operate a distinct NFLP loan fund. The NFLP loan fund is used by the applicant school of nursing to make loans to eligible students pursuing an advanced nursing degree program that will prepare the student to become qualified as a nursing faculty.

The NFLP-Program Specific Data Form will capture program-related information provided by the applicant. NFLP applicants will complete and submit the NFLP-Program Specific Data Form as an electronic attachment with the required application materials. The form will provide the Federal Government with specific data from the applicant which include: (1) The amount of the Federal funds requested by the applicant, (2) the expected contribution from the applicant, (3) the student enrollment and graduation data based on current and prospective NFLP loan recipients, (4) the graduate nursing education programs supported under NFLP, (5) the program accreditation status, (6) the current tuition and fee information for graduate nursing education programs, and (7) the projected NFLP loan fund balance that may be considered as part of the award determination. The data provided in the form are essential for the formula-based criteria used to determine the award amount to the applicant institutions.

Approval of the new NFLP-Program Specific Data Form will facilitate our current effort to develop an automated data collection capability for the NFLP. The electronic data collection capability will streamline the application submission process, enable an efficient award determination process, and serve as a data repository to facilitate reporting on the use of funds and analysis of program outcomes. Additionally, the data will be used to ensure programmatic compliance with the legislative authority and program guidance, to report program accomplishments to policymakers and Congress, and to formulate and justify the appropriation request to the Office of Management and Budget and Congress.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NFLP-Program Specific Data Form	150	1	150	8	1200

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: September 3, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–20901 Filed 9–8–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended 5 U.S.C. Appendix 2, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(cX6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts for SSPS.

Date: September 12, 2008.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmerskcsr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Neuroendocrinology and Neuroimmunology.

Date: September 18, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Chemoprevention.

Date: September 19, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *Zouzhiqcsr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Epidemiologic Approaches to Acute and Chronic Conditions.

Date: September 23, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770 Bethesda, MD 20892, 301–435–1721, *hfriedmancsr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Vectors and Parasites.

Date: September 25–26, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundrcsr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20634 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function D Study Section, October 7, 2008, 8 a.m. to October 8, 2008, 5:30 p.m., Hotel Rouge, 1315 16th Street, Washington, DC, 20036 which was published in the **Federal Register** on August 25, 2008, 73 FR 50046–50048.

The meeting will be held one day only October 7, 2008, from 8 a.m. to 6:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: August 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20635 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(cX4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Behavioral Genetics.

Date: September 15, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ann Hardy, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0695, *hardyan@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Translational Research on the Relationship, of Anxiety and Depression.

Date: September 23–24, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoumcsr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental Fluorosis: RUMP-Special Emphasis Panel.

Date: September 24, 2008.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biology of Development and Aging Integrated, Review Group Development—2 Study Section.

Date: October 2–3, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Columbia Room, Washington, DC 20037.

Contact Person: Neelakanta Ravindranath, PhD, MVSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindrn@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience, Integrated Review Group Cell Death in Neurodegeneration Study Section.

Date: October 2–3, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 301–435–1246, *etchebercsr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated, Review Group Genomics, Computational Biology, and Technology Study Section.

Date: October 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Barbara J. Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated, Review Group Genetics of Health and Disease Study Section.

Date: October 6–7, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–1045, *corsaroc@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.

Date: October 7–8, 2008.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20639 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular Genetics B Study Section, October 2, 2008, 8 a.m. to October 3, 2008, 4 p.m., Admiral Fell Inn, 888 South Broadway, Baltimore, MD, 21231 which was published in the **Federal Register** on August 21, 2008, 73 FR 49465–49467.

The meeting will be held October 1, 2008 to October 2, 2008. The meeting time and location remain the same.

The meeting is closed to the public.

Dated: August 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20641 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function C Study Section, October 6, 2008, 8 a.m. to October 7, 2008, 6 p.m., Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007 which was published in the **Federal Register** on August 21, 2008, 73 FR 49465–49467.

The meeting will be held one day only October 6, 2008. The meeting time and location remains the same. The meeting is closed to the public.

Dated: August 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20645 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Extended ACTS Conflict Review.

Date: September 19, 2008.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ACTS Member Conflict Review.

Date: September 19, 2008.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809, *bartletr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; GPCR Function and Regulation.

Date: September 25, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodevelopment.
Date: September 25, 2008.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301–435–1224, *lewisdeb@csr.nih.gov*.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.
Date: September 29–30, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.
Date: October 2, 2008.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Chicago Marriott Downtown, 540 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Sandra Melnick Seitz, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnick@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Immunity and Host Defense Study Section.
Date: October 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Chicago Marriott Downtown, 540 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor. Immunology Study Section.
Date: October 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Lombardy, 2019 I Street, NW., Washington, DC 20006.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.
Date: October 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Death In Neurodegeneration.
Date: October 2–3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.
Date: October 2–3, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Contact Person: Lawrence Baizer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.
Date: October 2–3, 2008.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Savoy Suites Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–1227, *jig@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.
Date: October 3, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

Name of Committee: Digestive Sciences Integrated Review Group; Hepatobiliary Pathophysiology Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco Seattle, 1101 Fourth Avenue, Seattle, WA 98101.
Contact Person: James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Alcohol and Toxicology.
Date: October 6–7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.
Date: October 6–7, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Peter B. Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: October 6, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics; A Study Section.

Date: October 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: October 6, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Biao Than, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 6, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

Date: October 6–7, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186A, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: October 7, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Vector Biology Study Section.

Date: October 8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: October 9–10, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203.

Contact Person: Tina Mcintyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Synthetic and Biological Chemistry Review Panel.

Date: October 9, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20900 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the AIDS Research Advisory Committee, NIAID, September 16, 2008, 8:30 a.m. to September 17, 2008, 5 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892 which was published in the **Federal Register** on August 25, 2008, 73 FR N50049.

The meeting will now discuss the post-NIAID Vaccine Summit activities and plans, and to initiate dicussions and obtain advice pertaining to the use of the nonhuman primate model for AIDS vaccine research. The meeting is open to the public.

Dated: September 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20835 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Advisory Neurological Disorders and Stroke Council, September 18, 2008, 8 a.m. to September 18, 2008, 10 a.m., National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 7, Bethesda, MD 20892 which was published in the **Federal Register** on August 22, 2008, 73; FR E8–19449.

The Basic and Preclinical Programs Subcommittee meeting has been canceled.

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20633 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: October 2–3, 2008.

Time: 4 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel Chevy Chase, Washington, DC 20015.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/Room 2c212, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: October 2–3, 2008.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group

Clinical Aging Review Committee

Date: October 2–3, 2008.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4500 Military Road, Washington, DC 20015.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20637 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 a meeting of the Board of Scientific Counselors, NIA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 28–29, 2008.

Time: October 28, 2008, 8 a.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor Conference Room, Baltimore, MD 21224.

Time: October 29, 2008, 8 a.m. to 6:35 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Blvd., 3rd Floor Conference Room, Baltimore, MD 21224.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20638 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; AA–3 Member Conflict Applications.

Date: October 15, 2008.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrina L Foster, PhD, Scientific Review Officer, National Inst on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3042, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20640 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Institutional National Research Service Awards.

Date: October 15, 2008.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov*.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Pre and Post-Doctoral Individual National Research Service Awards.

Date: October 17, 2008.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20642 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 16–17, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20643 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: October 6, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jose F. Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301–451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: October 7, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401 Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: October 7–8, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Kristen V. Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1433, *huntleyk@maiI.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis. Panel I/ START REVIEW.

Date: October 17, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20892. (Virtual Meeting)

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, 301–435–1389, *ms80x@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: November 5–6, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20648 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Fedearl 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 Allergy and Infectious Diseases Special Emphasis Panel; Rejuvenating the Aged Immune System.

Date: October 2–3, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Barney Duane Price, PhD, Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA Room 3139, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pricebd@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Disease Research, National Institutes of Health, HHS)

Dated: September 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20836 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Cooperative Research Partnerships for Biodefense and Emerging Infectious Diseases (U01).

Date: October 1, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID, DEA, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 451–3684, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20837 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Mental Health Services in MH Specialty Settings, October 7, 2008, 8:30 am to October 7, 2008, 5 p.m., Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202 which was published in the **Federal Register** on August 15, 2008, 73 FR 47958.

The meeting location has been changed to the Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037. The meeting date and times remain the same. The meeting is closed to the public.

Dated: September 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20902 Filed 9–8–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Toolkit Protocol for the Crisis Counseling Assistance and Training Program (CCP)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will create a toolkit to be used for the purposes of collecting data on the Crisis Counseling Assistance and Training Program (CCP). The CCP provides supplemental funding to states

and territories for individual and community crisis intervention services during a federal disaster.

The CCP has provided disaster mental health services to millions of disaster survivors since its inception and, as a result of 30 years of accumulated expertise, it has become an important model for Federal response to a variety of catastrophic events. State CCPs, such as Project HOPE (after Hurricane Floyd in North Carolina), Project Heartland (in Oklahoma City after the Murrah Federal Building bombing), Project Liberty (in New York after 9/11), and Project Outreach for Recovery (after the Rhode Island nightclub fire) have primarily addressed the short-term mental health needs of communities through (a) outreach and public education, (b) individual and group counseling, and (c) referral. Outreach and public education serve primarily to normalize reactions and to engage people who might need further care. Crisis counseling assists survivors to cope with current stress and symptoms in order to return to predisaster functioning. Crisis counseling relies largely on ''active listening,'' and crisis counselors also provide psycho-education (especially about the nature of responses to trauma) and help clients build coping skills. Crisis counseling typically continues no more than a few times. Because crisis counseling is time-limited, referral is the third important function of CCPs. Counselors are expected to refer clients to formal treatment if the person has developed more serious psychiatric problems.

Data about services delivered and users of services will be collected throughout the program period. The data will be collected via the use of a toolkit that relies on standardized forms. At the program level, the data will be entered quickly and easily into a cumulative database to yield summary tables for quarterly and final reports for the program. We have confirmed the feasibility of using scanable forms for most purposes. Because the data will be collected in a consistent way from all programs, they can be uploaded into an ongoing national database that likewise provides CMHS with a way of producing summary reports of services provided across all programs funded.

The components of the toolkit are listed and described below:

• Encounter logs. These forms document all services provided. Completion of these logs is required by the crisis counselors. There are three types of encounter logs:

(1) *Individual Crisis Counseling Services Encounter Log.* Crisis counseling is defined as an interaction that lasts at least 15 minutes and involves participant disclosure. This form is completed by the crisis counselor for each service recipient, defined as the person or persons who actively participated in the session (*e.g.*, by verbally participating), not someone who is merely present. For families, crisis counselors complete separate forms for all family members who are actively engaged in the visit. Information collected includes demographics, service characteristics, risk factors, event reactions, and referral data.

(2) *Group Encounter Log.* This form is used to identify either a group crisis counseling encounter or a group public education encounter. A check at the top identifies the class of activities (*i.e.*, counseling or education). Information collected includes services characteristics, group identity and characteristics, and group activities.

(3) *Weekly Tally Sheet.* This form documents brief educational and supportive encounters not captured on any other form. Information collected includes service characteristics, daily tallies and weekly totals for brief educational or supportive contacts and material distribution with no or minimal interaction.

○ Assessment and Referral Tools. Generally, the forms are used as an interview guide with adults or children/youth (*i.e.*, please note that the child/youth tool is NEW to the data toolkit) who have received individual crisis counseling on two or more occasions for those individuals that may need referral to further and more intensive services. However, these tools may be used at any time that a crisis counselor suspects that an individual is experiencing serious reactions to the disaster. Typically, these tools will be used beginning three months post-disaster and will be completed by the crisis counselor or team leader.

○ *Adult Assessment and Referral Tool*—This tool includes the collection of information on characteristics of the encounter, risk categories, and demographics. The tool also includes the SPRINT-E, an 11-item measure of post-disaster distress including but not limited to symptoms of post traumatic stress disorder (PTSD).

○ *Child/Youth Assessment and Referral Tool* (NEW)—This tool includes the collection of information on risk factors, demographics, and 15 items from the University of California Los Angeles (UCLA) Reaction Index to assess post-disaster symptoms; additional items are also included for the parents to rate their child's feelings and behavior.

• Participant Feedback. These surveys are completed by and collected from a sample of service recipients, not every recipient. A time sampling approach (*e.g.*, soliciting participation from all counseling encounters one week per quarter) will be used. Information collected includes satisfaction with services, perceived improvements in self-functioning, types of exposure, and event reactions.

• CCP Service Provider Feedback. These surveys are completed by and collected from the CCP service providers (*i.e.*, crisis counselors) anonymously at approximately six months and one year post-event. The items on this form relate to the training, work environment, and level of job stress experienced by the crisis counselor. The survey will be coded on several program-level and worker-level variables to be shared with program management for review.

Data collection point	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Hourly rate	Total hour cost
Individual Crisis Counseling Services Encounter Log Form	[1] 200	[2] 396	79,200	.08	6,336	$20	$126,720
Group Encounter Log Form	[3] 100	[3] 99	9,900	.04	396	20	7,920
Weekly Tally Sheet	[1] 200	[4] 33	6,600	.10	660	20	13,200
Assessment & Referral Tools	[1] 200	[5] 158	31,600	.15	4,740	20	94,800
Participant Feedback	1,000	1	1,000	.15	150	20	3,000

Data collection point	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Hourly rate	Total hour cost
CCP Service Provider Feedback	[6] 100	1	100	.15	15	20	300
Total			128,400		12,297		245,940

[1] 200 is based on typical average of 10 (1.00 FTE) crisis counselors per grant with an approximate average of 20 grants per year (*i.e.*, 10 × 20 = 200).
[2] Average of 12 forms per week for each crisis counselor at 33 weeks that includes both Immediate Services and Regular Services Programs (*i.e.*, 12 × 33 = 396).
[3] Average of 3 forms per week for a pair of crisis counselors (*i.e.*, 2 counselors completing 1 form = 100 crisis counselors) at 33 weeks that includes both Immediate Services and Regular Services Programs (3 × 33 = 99).
[4] Average of 33 weeks for each grant that includes both Immediate Services and Regular Services Programs.
[5] On average 30% of crisis encounters may result in the use of this optional tool.
[6] On average 50% of service providers/crisis counselors may complete or use this optional tool.

Written comments and recommendations concerning the proposed information collection should be sent by October 9, 2008 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 28, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–20884 Filed 9–8–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660–0020, No Forms.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Collection of Information

Title: Write Your Own (WYO) Program.

OMB Number: 1660–0020.

Abstract: Under the WYO Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is grantor of flood insurance coverage for WYO Companies, issued under the WYO arrangements. In order to maintain adequate financial control over Federal funds, the NFIP requires the WYO Companies to submit a monthly financial report. The NFIP examines the data to insure that policyholder funds are accounted for and appropriately expended.

Affected Public: Business or other for-Profit.

Number of Respondents: 91. The total number of respondents of 97 previously reported in the 60-day **Federal Register** Notice at 73 FR 27545, May 13, 2008 has been decreased.

Estimated Time per Respondent: 35.4 minutes.

Estimated Total Annual Burden Hours: 644.28 hours. The total annual burden hours of 687 previously reported in the 60-day **Federal Register** Notice at 73 FR 27545, May 13, 2008 has been decreased.

Frequency of Response: 12.

Comments: 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 Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before October 9, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: August 22, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–20811 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* August 31, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Duval County for Individual Assistance (already designated for Public Assistance)

Leon, Seminole, and Wakulla Counties for Individual Assistance and Public Assistance.

Alachua, Dixie, Hamilton, Lake, Marion, and Osceola Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20812 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* August 29, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Calhoun, Duval, Jefferson, Liberty, Putnam, and St. Johns Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20813 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Lee County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20817 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* August 26, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the Individual Assistance program for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Brevard County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20827 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* August 24, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 24, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Tropical Storm Fay beginning on August 18, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas P. Davies, of FEMA, is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Florida have been designated as adversely affected by this declared major disaster:

Brevard, Monroe, Okeechobee, and St. Lucie Counties for Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20828 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* August 26, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Volusia County for Individual Assistance.

Okeechobee and St. Lucie Counties for Individual Assistance (already designated for Public Assistance).

Hendry County for Individual Assistance and Public Assistance.

Baker, Bradford, Collier, Gadsden, Glades, Hardee, and Union Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20831 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1785–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

DATES: *Effective Date:* August 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Nassau and Palm Beach Counties for Public Assistance.

Volusia County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20832 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1771–DR]

Illinois; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1771–DR), dated June 24, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 2008.

Scott County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20818 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1763–DR]

Iowa; Amendment No. 19 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1763–DR), dated May 27, 2008, and related determinations.

DATES: *Effective Date:* August 26, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 27, 2008.

Howard, Humboldt, Jackson, and Poweshiek Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20830 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1777–DR]

Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–1777–DR), dated July 14, 2008, and related determinations.

DATES: *Effective Date:* August 27, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Michigan is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 14, 2008.

Saginaw County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20819 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1783–DR]

New Mexico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–1783–DR), dated August 14, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 14, 2008.

All counties in the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20826 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1783–DR]

New Mexico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–1783–DR), dated August 14, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 20, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20833 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3287–EM]

California; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3287–EM), dated June 28, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 20, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20820 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3288–EM]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3288–EM), dated August 21, 2008, and related determinations.

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 21, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Florida resulting from Tropical Storm Fay beginning on August 18, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas P. Davies, of FEMA, is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

All 67 counties in the State of Florida for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20829 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3289–EM]

Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA–3289–EM), dated August 29, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Louisiana is hereby amended to include the following areas among those areas for which the President declared an emergency on August 29, 2008:

Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, Vernon, West Baton Rouge, and West Feliciana Parishes for debris removal (Category A) under the Public Assistance program (already designated for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20815 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3291–EM]

Mississippi; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3291–EM), dated August 30, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Mississippi is hereby amended to include the following areas among those areas for which the President declared an emergency on August 30, 2008:

Jackson, Hancock, and Harrison Counties for debris removal (Category A) under the

Public Assistance program (already designated for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20814 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3284–EM]

Texas; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3284–EM), dated March 14, 2008, and related determinations.

DATES: *Effective Date:* September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 1, 2008.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–20816 Filed 9–8–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Crew Effects Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0020. Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crew Effects Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 36543) on June 27, 2008, allowing for a 60-day comment period. One public comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 9, 2008.

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Crew Effects Declaration.

OMB Number: 1651–0020.

Form Number: CBP Form–1304.

Abstract: CBP Form–1304 contains a list of crew's effects that are accompanying them on the trip, which are required to be manifested. It also contains the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as crew's effects.

Current Actions: This proposal is being submitted to extend the expiration date and to make a change to the burden hours in accordance with public comments that CBP received.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 9,000.

Estimated Number of Annual Responses: 206,100.

Estimated Time Per Response: 60 minutes.

Estimated Total Annual Burden Hours: 206,100.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room

3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 2, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–20798 Filed 9–8–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Vessel Entrance or Clearance Statement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing information collection: 1651–0019 Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Vessel Entrance or Clearance Statement. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 36543) on June 27, 2008, allowing for a 60-day comment period. Two public comments were received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 9, 2008.

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Vessel Entrance or Clearance Statement Form.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Abstract: Form 1300 is used by a master of a vessel to attest to the truthfulness of all other forms associated with the manifest.

Current Actions: This proposal is being submitted to extend the expiration date and to make a change to the burden hours in accordance with public comments that CBP received.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses: 264,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 132,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 2, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–20797 Filed 9–8–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact

SUMMARY: This notice publishes the Approval of the Sixth Amendment to and Extension of the Agreement between the Crow Tribe of Montana and the State of Montana concerning Class III Gaming.

DATES: Effective Date: September 9, 2008.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment allows the Crow Tribe to offer simulcast horseracing and pari-mutuel betting, as well as sets forth minimum standards for the operation and licensing of the activity in accordance 25 U.S.C. 2710(d)(3)(C)(vi).

Dated: August 26, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E8–20923 Filed 9–8–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–02–PB 24 1A]

Extension of Approved Information Collection; OMB Control No. 1004–0162

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from

entities who conduct geophysical operations on public lands.

DATES: You must submit your comments to BLM at the address below on or before November 10, 2008. BLM will not necessarily consider any comments received after the above date.

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

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., (Attention: 1004–0162), Washington, DC 20240.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036.

E-mail: *information_collection@blm.gov* (Attn.: 1004–0162)

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. Before including your address, telephone 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 in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Division of Fluid Minerals, at (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a), requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden 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.

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of Federal mineral estate. The MLA authorizes the Secretary and the Secretary of Agriculture to permit lessees, exploration companies, and independent exploration operators to conduct geophysical exploration on or off leases. The Act of August 7, 1947 (Mineral Leasing Act for Acquired Lands), authorizes the Secretary of the Interior to lease lands acquired by the United States (30 U.S.C. 341–359); and the Federal Onshore Oil and Gas Leasing Reform Act of December 22, 1987, authorizes the Secretary of the Interior to lease National Forest System (NFS) lands with Forest Service (FS) consent. On NFS lands, the Secretary of Agriculture is authorized to regulate all surface-disturbing activities which take place on a lease.

43 CFR Group 3150 establishes procedures for BLM to issue authorizations to conduct oil and gas geophysical exploration operations on public lands. 36 CFR part 228 subpart E, and 36 CFR 251 subpart A and subpart B establish procedures for the FS to authorize geophysical operations on FS lands.

The BLM and FS need the information requested on the Notice of Intent to process applications for geophysical exploration operations on public lands and to manage environmental compliance requirements in accordance with the laws, regulations, and land use plans. The BLM and FS use the information to determine if operators will conduct geophysical operations in a manner consistent with the regulations, local land use plans, and stipulations. The BLM and FS need the information requested on the Notice of Completion to determine whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary. You may submit the forms in person or by mail. We need the company name, address, and telephone number to identify the person/entity conducting operations. BLM will assign a Case File Number to track each specific operation. We require the legal land description to determine the location of the involved public lands. Additional information that we request includes the type and size of the proposed activity, location of the proposed operation, equipment you plan to use, operating procedures, and timing of the operation.

Applicants must submit these forms to allow BLM and FS to determine who is conducting geophysical operations on public lands. An interagency BLM/FS team revised the respective forms to streamline and improve the process for both the Federal government and its customers. Combining the BLM and FS individual forms into a single BLM/FS form will ensure consistent management of the geophysical operations on public lands and will better serve the public. The BLM consulted with the FS in estimating the FS information collection burdens. The forms are:

1. Notice of Intent and Request for Authorization to Conduct Geophysical Exploration Operations (NOI/RFA), BLM SF 3110–4/FS SF 2800–16; and

2. Notice of Completion of Geophysical Exploration Operations, BLM SF 3110–5/FS SF 2800–16a.

Based on experience administering onshore oil and gas geophysical exploration operations, BLM and FS estimate the public reporting burden for completing the Notice of Intent is one hour, and for completing the Notice of Completion is 20 minutes. The information we require is clearly outlined on the forms and in the terms and conditions. The respondents already maintain the information for their own recordkeeping purposes and will need only to transfer or attach it to the forms. BLM and FS estimate that it receives approximately 625 Notices of Intent (600 to BLM and 25 to FS), 625 Notices of Completion, and 3 nonform data items annually (Alaska only, if off lease), with a total annual burden of 836 hours. Respondents vary from small businesses to major corporations.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 3110–4/FS Form 2800–16 or BLM Form 3110–5/FS Form 2800–16a by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: September 3, 2008.

Ted Hudson,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E8–20889 Filed 9–8–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–07–1320–EL; WVES–50560; WVES–50556]

Notice of Extension of the East Lynn Lake Coal Lease Draft Land Use Analysis and Draft Environmental Impact Statement; Coal Lease Applications WVES–50556 and WVES–50560, Wayne County, WV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Comment Period Extension.

SUMMARY: The Bureau of Land Management (BLM) is announcing an extension of the comment period on the East Lynn Lake Coal Lease Draft Land Use Analysis and Draft Environmental Impact Statement (DLUA/DEIS) to analyze the potential impacts of two Federal Coal Lease By Applications, WVES–50556 and WVES–50560, totaling 13,089.55 acres at the U.S. Army Corps of Engineers' East Lynn Lake Project in Wayne County, West Virginia, and by this notice is announcing the extension of the comment period. The original notice published in the **Federal Register** on June 27, 2008 [73 FR 125] provided for a comment period to end on September 24, 2008. An amended notice published on July 3, 2008 [73 FR 129] provided a correction to the project's state location from Virginia to West Virginia.

DATES: The BLM is extending the comment period for 45 days ending on November 10, 2008.

ADDRESSES: The DLUA/DEIS is posted on the Internet at *http://www.blm.gov/es/st/en/prog/east_lynn_lake_coal/DLUA_DEIS.html*. You may submit comments by any of the following methods:

- *E-mail: EastLynnLakeComments@blm.gov.*
- *Mail:* BLM Milwaukee Field Office, Attn: Chris Carusona, 626 E. Wisconsin Ave., Suite 200, Milwaukee, WI 53202.
- *Facsimile:* 414–297–4409, Attn: Chris Carusona.

Comments, including names and addresses of respondents, will be available for public review at the Milwaukee BLM Field Office, and will be subject to disclosure under the Freedom of Information Act. 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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Chris Carusona, Planning and Environmental Coordinator, at 414–297–4463.

SUPPLEMENTARY INFORMATION: The original Notice of Availability provided for comments on the DLUA/DEIS to be received through September 24, 2008. The BLM received requests for an extension of the comment period from individuals and groups. The BLM has reviewed these requests. Comments on the DLUA/DEIS will now be accepted through November 10, 2008.

Dated: September 3, 2008.

A. Barron Bail,

BLM ES, Acting State Director.

[FR Doc. E8–20888 Filed 9–8–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 6443, UTU 012532, and UTU 0146037]

Public Land Order No. 7708; Partial Revocation of Public Land Order Nos. 1391, 4060, and 4567; Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects an error in the land description published as FR Doc. E8–12424 in the **Federal Register**, 73 FR 31880–31881, June 4, 2008.

On page 31881, column 1, line 13 from the top, which reads ''Salt Lake Meridian'' is hereby corrected to read ''Uintah Special Meridian''.

On page 31881, below ''b. Hawthorne Campground,'' column 1, line 20 from the top, and above ''T. 8 S., R. 5 E.,'' column 1, line 21 from the top, insert ''Salt Lake Meridian''.

Dated: August 20, 2008.

Jeff Rawson,

Associate State Director.

[FR Doc. E8–20886 Filed 9–8–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF LABOR

Office of Job Corps; Advisory Committee on Job Corps; Notice of Renewal of the Advisory Committee on Job Corps Charter

AGENCY: Office of Job Crops, Department of Labor.

ACTION: Renewal of the Advisory Committee on Job Corps charter.

SUMMARY: Notice is hereby given that after consultation with the General Services Administration, it has been determined that the renewal of an advisory committee on Job Corps is necessary and in the public interest. Accordingly, the U.S. Department of Labor, Office of Job Corps has renewed the Advisory Committee on Job Corps charter with several minor revisions. The revisions are not intended to change the purpose or the Committee's original intent.

SUPPLEMENTARY INFORMATION:

Background

The Current Advisory Committee on Job Corps charter expires September 7, 2008. These proposed revisions were not intended to change the purpose or the Committee's original intent. The revisions were intended to update and align with Job Corps vision for the 21st century.

The revisions are found in the following two sections of the Charter: A Description of the Duties for Which the Committee is Responsible and Termination Date.

Summary of Revisions

- A description of the duties for which the Committee is responsible were slightly modified to reflect an addendum report.
- The termination date was extended to provide sufficient time for Committee activities and evaluations necessary to obtain results needed in advising and making recommendations to the Secretary.

The Advisory Committee on Job Corps provides advice and recommendations to the Secretary of Labor pertaining to the review, development, and implementation of policies, legislation, and regulations affecting Job Corps. It serves to broadly evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves, particularly as related to creating a pipeline of young workers for a demand-driven workforce.

The Committee is composed of 16 individuals appointed by the Secretary. The membership of the Committee shall include equal representation of employers, education community, labor organizations, and the public/private sectors. The Secretary shall appoint one of the members as Chairperson to the Committee. A representative of the U.S. Department of Education, U.S. Department of Health and Human Services and the U.S. Department of Justice shall be invited to serve as non-voting members to the Committee ex-officio. The Deputy Secretaries of Labor, Agriculture, and Interior shall be non-voting members to the Committee ex-officio. The National Director, Office of Job Corps, Office of the Secretary (OSEC), shall be the designated Federal official to the Committee.

Terms of members shall be 2 years, as designated by the Secretary, and all Committee members shall serve at the pleasure of the Secretary. Appointments to vacancies occurring during the terms of such appointments shall be for the unexpired portions of the terms.

FOR FURTHER INFORMATION CONTACT: Crystal Woodard, Office of Job Corps, 202–693–3000 (this is not a toll-free number).

Signed at Washington, DC, this 3rd day of September 2008.

Esther R. Johnson,

Administrator, Office of Job Corps.

[FR Doc. E8–20870 Filed 9–8–08; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Music/Jazz (application review): September 29, 2008 by teleconference. This meeting, from 12 p.m. to 4 p.m. will be closed.

Learning in the Arts (application review): October 3, 2008 in Room 716. This meeting, from 9 a.m. to 6 p.m., will be closed.

Learning in the Arts (application review): October 14–15, 2008 in Room 716. A portion of this meeting, from 1:30 p.m. to 2 p.m. on October 15th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 14th, and from 9 a.m. to 1:30 p.m. and 2 p.m. to 3 p.m. on October 15th, will be closed.

Learning in the Arts (application review): October 21–24, 2008 in Room 716. A portion of this meeting, from 1:15 p.m. to 1:45 p.m. on October 24th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 21st—23rd and from 9 a.m. to 1:15 p.m. and 1:45 p.m. to 5 p.m. on October 24th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: August 8, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E8–20788 Filed 9–8–08; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, September 16, 2008.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The three items are open to the public.

MATTERS TO BE CONSIDERED:

8042 Special Investigation Report on the Safety of Parachute Jump Operations.

8040 Aircraft Accident Summary Report on Crash of Skydive Quantum Leap, de Havilland DHC–6–100, N203E, Sullivan, Missouri, July 29, 2006.

8041 Highway Accident Report—Truck-Tractor Semitrailer Rollover and Motorcoach Collision With Overturned Truck, Interstate Highway 94, Near Osseo, Wisconsin, October 16, 2005.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, September 12, 2008.

The public may view the meeting via a live or archived Web cast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: September 5, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8–21024 Filed 9–5–08; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 14, 2008, to August 27, 2008. The last

biweekly notice was published on August 26, 2008 (73 FR 50356).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: August 14, 2008.

Description of amendment request: The proposed amendment would modify Specification 4.4.f.1, ''Containment Isolation Device Verification,'' of the Technical Specifications (TS) to require verification that the 36-inch containment purge and vent isolation valves are sealed closed when the reactor is at greater than Cold Shutdown conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Design Bases Accidents (DBA) that result in a release of radioactive material within containment are a steam line break, rupture of a rod cluster control assembly, and loss-of-coolant accident (LOCA). In the analyses for each of these accidents, it is assumed that containment isolation valves are either closed or function to close within the required isolation time following accident initiation. This ensures that potential leakage paths to the environment

through containment isolation valves (including containment purge and vent isolation valves) are minimized. The safety analyses assume that the containment purge and vent isolation valves are closed at accident initiation.

The safety function of the containment purge and vent isolation valves is to support the Containment Isolation system by confining fission products within the Primary Containment system boundary during a DBA. The proposed amendment would require verification that the containment purge and vent isolation valves are sealed closed when the reactor is at greater than Cold Shutdown conditions. This requirement ensures the valves are in their required DBA post-accident position when the reactor is at greater than Cold Shutdown conditions.

Verifying the containment purge and vent isolation valves are sealed closed at 31-day intervals does not add, delete, or modify any KPS system, structure, or component (SSC). Verifying that the containment purge and vent isolation valves are sealed closed when the reactor is at greater than Cold Shutdown conditions has no adverse effect on the ability of the plant to mitigate the effects of DBAs. The subject surveillance requirement constitutes a verification of isolation valve position and has no effect on equipment. Verification of valve closure only ensures the previous assumptions made in evaluating the consequences of DBAs remain valid. Therefore, there is no increase in the probability of an accident by performing the surveillance in additional modes of plant operation.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Verifying the containment purge and vent isolation valves are sealed closed when the reactor is at greater than Cold Shutdown conditions at 31-day intervals ensures these valves are in their required DBA post-accident position when the design function is required. The proposed amendment does not change the manner in which these valves are operated when the reactor is at or below Cold Shutdown or their design function. The proposed amendment does not create any new failure mechanisms or malfunctions for plant equipment or the nuclear fuel.

In addition, the containment purge and vent isolation valves are not accident initiators. Their function is only for mitigation of accidents.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Verifying the containment purge and vent isolation valves are sealed closed when the reactor is at greater than Cold Shutdown conditions at 31-day intervals ensures these valves are in their required DBA post-accident position when the design function is required. The proposed amendment does not change the manner in which these valves are operated when the reactor is at or below Cold Shutdown condition.

The proposed amendment would align the KPS TS with applicable NRC requirements stated in NUREG–0800 [''Standard Review Plan,''], Section 6.2.4 and NUREG–0737 [''Clarification of Three Mile Island Action Plan Requirements,''], Item II.E.4.2. The proposed amendment does not result in altering or exceeding a design basis or safety limit for the plant. The safety analysis of record, including evaluations of the radiological consequences of design basis accidents, will remain applicable and unchanged.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Lois James.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 1, 2008.

Description of amendment request: The proposed amendments would authorize changes to the Updated Final Safety Analysis Report (UFSAR) to account for small areas of carbon steel (CS) and low alloy steel that may be exposed to the reactor coolant system (RCS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The Pressurizer vent nozzle and thermowell, as components of the RCS, must maintain system pressure boundary. RCS design pressure is 2500 psig and design temperature is 670 °F. The vent nozzle and thermowell replacements are designed for the RCS pressure and temperature. As described above, the material of the new Pressurizer vent nozzle and thermowell is an improvement in the PWSCC [primary water stress corrosion cracking] resistance of those components as compared to the original components. The design of the new Pressurizer vent nozzle and thermowell exposes small areas of the Pressurizer shell carbon steel to a stagnant reactor coolant environment. However, the corrosion of the Pressurizer shell is considered negligible. Therefore, the replacement of the Pressurizer vent nozzle and thermowell do not more than minimally increase the likelihood of occurrence of a malfunction. Corrosion evaluations performed show that all applicable ASME Code requirements are met.

It is concluded that the consequences of a Pressurizer vent nozzle or Pressurizer thermowell failure resulting in a LOCA [loss-of-coolant accident] are bounded by existing analysis. Therefore, there is no increase in the probability or consequences of an accident.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The only credible accident involving the failure of these components is bounded by existing LOCA analyses. There are no new accidents that need to be postulated due to the replacement of the Pressurizer vent nozzle and Pressurizer thermowell. Therefore, this proposed activity will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No.

The mitigation technique selected for the Pressurizer vent nozzle and the Pressurizer thermowell exposes a small area of CS to the RCS environment. As required by the ASME Code, Section III, a supporting corrosion evaluation was developed within each of the two component designs. The technical package for the replacement of the Pressurizer vent nozzle and the Pressurizer thermowell utilized calculations to support the evaluation of the acceptability of this repair/replacement activity. The corrosion evaluation for the Pressurizer vent resulted in a conservative general stagnant corrosion rate of 0.0018 inches per year and the corrosion evaluation for the Pressurizer thermowell resulted in a conservative general corrosion rate of 0.00142 inches per year. The critical corrosion distance is the radius from the exposed CS surface to the edge of the weld pad. This distance is at least 1.1 inches for both the vent and thermowell designs. With this distance, a corrosion rate of less than 2 mils per year is not significant when compared to the 60 year component design life, which begins at the time of installation.

The original Pressurizer was designed to meet Section III of the ASME Code, and the Pressurizer, as modified, meets Section III of the ASME code. Although this change does expose small areas of CS in the Pressurizer, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Melanie C. Wong.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of amendment request: July 8, 2008.

Description of amendment request: The proposed amendment to Indian Point Nuclear Generating Units Nos. 2 and 3 (IP2 and IP3) would require the licensee to submit information and analyses associated with extending the Reactor Vessel (RV) Inservice Inspection (ISI) Interval from 10 to 20 years for specific pressure retaining welds in the RV.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change will revise the license to require the submission of information and analyses to the NRC following completion of each ASME [American Society of Mechanical Engineers] [C]ode, Section XI, Category B–A and B–D Reactor Vessel weld inspection. The extension of the ISI from 10 to 20 years is being evaluated as part of the relief request independent from the license change. Submission of the information and analyses can have no effect on the consequences of an accident or the probability of an accident because the submission of information is not related to the operation of the plant or any equipment, the programs and procedures used to operate the plant, or the evaluation of accidents. The submittal of information and analyses provides the opportunity for the NRC to independently assess the information and analyses.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change will only affect the requirement to submit information and analyses when specified inspections are performed. There are no changes to plant equipment, operating characteristics or conditions, programs, and procedures or training. Therefore, there are no potential new system interactions or failures that could create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change will revise the license to require the submission of information and analyses to the NRC following completion of each ASME [C]ode, Section XI, Category B–A and B–D Reactor Vessel weld inspection which does not affect any Limiting Conditions for Operation used to establish the margin of safety. The requirement to submit information and analyses is an administrative tool to assure the NRC has the ability to independently review information developed by the [l]icensee. The proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 9, 2008.

Description of amendment request: The proposed amendment will revise the test acceptance criteria specified in the Technical Specification Surveillance Requirement (SR) 3.8.1.10 for the Diesel Generator (DG) endurance test. The load ranges and power factors specified for the test will be changed for consistency with the associated safety analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises the acceptance criteria to be applied to an existing surveillance test of the facility emergency diesel generators (DGs). Performing a surveillance test is not an accident initiator and does not increase the probability of an accident occurring. The proposed new acceptance criteria will assure that the DGs are capable of carrying the peak electrical loading assumed in the various existing safety analyses which take credit for the operation of the DGs. Establishing acceptance criteria that bound existing analyses validates the related assumption used in those analyses regarding the capability of equipment to mitigate accident conditions. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the test acceptance criteria for a specific performance test conducted on the existing DGs. The proposed change does not involve installation of new equipment or modification of existing equipment, so no new equipment failure modes are introduced. The proposed revision to the DG surveillance test acceptance criteria also is not a change to the way that the equipment or facility is operated and no new accident initiators are created. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The conduct of performance tests on safety-related plant equipment is a means of assuring that the equipment is capable of maintaining the margin of safety established in the safety analyses for the facility. The proposed change in the DG technical specification surveillance test acceptance criteria is consistent with values assumed in existing safety analyses is consistent with the design rating of the DGs. Therefore the propose change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: May 5, 2008.

Description of amendment request: The proposed amendment would correct an error in Section A.1 of the renewed operating license and remove several outdated license conditions relating to surveillance requirements. Specifically, it would remove the words ''filed by Entergy Nuclear Palisades, LLC (ENP) and Entergy Nuclear

Operations, Inc. (ENO)'' in Section A.1, spell-out acronyms used in Section 1.F, and delete license conditions 2.C.(4) and 2.C.(5), and delete Table 2.C.(5).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment deletes incorrect or outdated information from the renewed facility operating license. The proposed amendment does not involve operation of the required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated.

Modification of renewed facility operating license sections 1.A and 1.F and deletion of license conditions 2.C.(4), 2.C.(5), and Table 2.C.(5) is administrative and has no impact on plant operation or equipment.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment does not involve a physical alteration of any SSC or change the way any SSC is operated. The proposed license amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated.

Modification of renewed facility operating license sections 1.A and 1.17 and deletion of license conditions 2.C.(4), 2.C.(5), and Table 2.C.(5) is administrative and has no impact on plant operation or equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Modification of renewed facility operating license sections 1.A and 1.F and deletion of license conditions 2.C.(4), 2.C.(5), and Table 2.C.(5) is administrative and has no impact on plant operation or equipment or on any margin of safety.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Lois M. James.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: May 5, 2008

Description of amendment request: The proposed amendment would revise renewed facility operating license DPR–20 to remove license condition 2F. This license condition describes reporting requirements for exceeding the facility steady-state reactor core power level described in condition 2.C.(1). The proposed change is consistent with the Nuclear Regulatory Commission (NRC)-approved change notice published in the **Federal Register** on November 4, 2005, announcing the availability of this improvement through the consolidated line item improvement process. The **Federal Register** Notice included a model safety evaluation and model no significant hazards consideration (NSHC) determination, relating to the elimination of the license condition involving reporting of violations of other requirements (typically in License Conditions 2.C) in the operating license of some commercial nuclear power plants. The licensee affirmed the applicability of the model NSHC determination in its application dated May 5, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Lois M. James.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood; Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: July 29, 2008.

Description of amendment request: The proposed amendments would remove time, cycle, or modification-related items from the operating licenses (OLs) and technical specifications (TSs) at both stations. Additionally, the proposed amendments would correct typographical errors introduced into the TSs at both stations in previous amendments. The time, cycle, or modification-related items have been implemented or superseded, are no longer applicable, and no longer need to be maintained in their associated OLs or TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted.

All changes proposed by EGC in this amendment request are administrative in nature, and are removing one-time requirements that have been satisfied or items that are no longer applicable. There are no physical changes to the facilities, nor any changes to the station operating procedures,

limiting conditions for operation, or limiting safety system settings.

Based on the above discussion, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

None of the proposed changes affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structure, system, or component reduced by the revised surveillance or testing requirements. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Based on this evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the Facility Operating Licenses and TS are administrative in nature and have no impact on the margin of safety of any of the TS. There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. The Operating License Conditions have been satisfied as required. There are no changes to the conditions themselves.

Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Florida Power and Light Company, et al. , Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: January 23, 2008.

Description of amendment request: Replace the current Technical Specification pressure/temperature (P/T) limit curves with new P/T limit curves applicable to 55 effective full-power years (EFPY). The low-temperature overpressure protection (LTOP) requirements, which are based on the P/T limits, will also be applicable to 55 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have been determined in accordance with the methodologies set forth in the regulations to provide an adequate margin of safety to ensure that the reactor vessel will withstand the effects of normal startup and shutdown cyclic loads due to system temperature and pressure changes as well as the loads associated with reactor trips. The regulations of 10 CFR Part 50 Appendix A, Design Criterion 14 and Design Criterion 31 remains satisfied. The pressure-temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of the ASME [American Society of Mechanical Engineers] Code Section XI, Appendix G. The margins of safety against fracture provided by the P/T limits using the requirements of 10 CFR 50 Appendix G are equivalent to those recommended in ASME Section XI, Appendix G. The Adjusted Reference Temperature (ART) values are based on the guidance of RG [Regulatory Guide] 1.99 [Reference 4].

The proposed changes will not result in physical changes to structures, systems or components SSCs or to event initiators or precursors. Changing the heatup and cooldown curves and the pressure relief setpoints to reflect 55 EFPY does not affect the ability to control the RCS [reactor coolant system] at low temperatures such that the integrity of the reactor coolant pressure boundary would not be compromised by violating the P/T limits.

The proposed changes will not impact assumptions and conditions previously used in the radiological consequence evaluations nor affect mitigation of these consequences due to an accident described in the UFSAR [Updated Final Safety Analysis Report]. Also, the proposed changes will not impact a plant system such that previously analyzed SSCs might be more likely to fail. The initiating conditions and assumptions for accidents described in the UFSAR remain as analyzed.

Thus, based on the above, reasonable assurance is provided that the proposed amendment does not significantly increase the probability or consequences of accidents previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requirements for P/T limit curves and LTOP have been in place since the beginning of plant operation. The revised curves are based on a later edition of Section XI of the ASME Code that incorporates current industry standards for P/T curves. The revised curves also are based on reactor vessel irradiation damage predictions using RG 1.99 methodology. No new failure modes are identified nor are any SSCs required to be operated outside of their design bases. Consequently, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed P/T curves continue to maintain the safety margins of 10 CFR 50 Appendix G by defining the limits of operation which prevent nonductile failure of the reactor pressure vessel. Analyses have demonstrated that the fracture toughness requirements are satisfied and that conservative operating restrictions are maintained for the purpose of low temperature overpressure protection. The P/T limit curves provide assurance that the RCS pressure boundary will behave in a ductile manner and that the probability of a rapidly propagating fracture is minimized. Therefore, operation in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: April 4, 2008.

Description of amendment request: The licensee proposed to change the Technical Specifications (TS) to revise requirements for unavailable barriers by adding Limiting Condition for Operation (LCO) 3.0.9. This LCO would establish conditions under which systems would remain operable when required physical barriers are not capable of providing their related support function. This proposed amendment is consistent with the NRC's approved Technical Specification Task

Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–427, Revision 2. A notice of availability of this TS improvement was published in the **Federal Register** on October 3, 2006 (71 FR 58444) as part of NRC's Consolidated Line Item Improvement Process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided an analysis of the issue of no significant hazards consideration by citing the proposed NSHC determination published by the NRC staff in the **Federal Register** referenced above. That proposed NSHC is reproduced below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP [incremental conditional core damage probability] and ICLERP [incremental conditional large early release probability]) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis cited by the licensee, and has found that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Lois M. James.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: April 22, 2008.

Description of amendment request: The licensee proposed to change the Technical Specifications (TS) to (1) revise the surveillance requirement frequency in Specification 3.1.3, ''Control Rod Operability,'' to require control rod notch testing to be performed at a 31-day frequency for both partially and fully withdrawn control rods; and (2) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension. These proposed changes are consistent with the NRC's approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications (STS) Change Traveler, TSTF–475, Revision 1. A notice of availability of this TS improvement was published in the **Federal Register** on November 13, 2007 (72 FR 63935), as part of the NRC's Consolidated Line Item Improvement Process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 FR 50.91(a), the licensee provided an analysis of the issue of no significant hazards consideration by citing the proposed NSHC determination published by the NRC staff in the **Federal Register** notice referenced above. That proposed NSHC is reproduced below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM [Source Range Monitoring] Insert Control Rod Action.'' TSTF–475, Revision 1, modifies NUREG–1433 (BWR [Boiling Water Reactor]/4) and NUREG–1434 (BWR/6) STS. The changes (1) revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, ''Control Rod OPERABILITY,'', and (2) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

TSTF–475, Revision 1 will: (1) Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY,'' and (2) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The GE Nuclear Energy Report, ''CRD Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF–475, Revision 1

are acceptable and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis cited by the licensee, and has found that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Lois M. James.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: June 26, 2008.

Description of amendment request: The proposed amendments would amend the Facility Operating Licenses by revising the licensing basis loss of coolant accident and main steam line break accident radiological dose consequences for Prairie Island Nuclear Generating Plant, Units 1 and 2, as currently described in the Updated Safety Analysis Report Section 14.5 and Section 14.9. This proposed amendment also proposes concomitant amendments to Appendix A of the Facility Operating Licenses, Technical Specifications (TS) 3.3.5, ''Containment Ventilation Isolation Instrumentation'', 3.4.17, ''RCS [Reactor Coolant System] Specific Activity'', and 3.6.3, ''Containment Isolation Valves'', which are necessary to implement the proposed revised analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes implementing revised loss of coolant accident and main steam line break accident dose consequence analyses to address modeling nonconservatisms and update the analyses for new fuel types and provide margin for power uncertainty. These analyses assumed that the containment inservice purge system penetrations are isolated, thus this license amendment request proposes Technical Specification revisions which will require these penetrations to be blind flanged during plant operations; these changes allow the Technical Specification requirements for containment ventilation isolation instrumentation to be removed. This license amendment request also proposes associated more restrictive limits in the Technical Specification for reactor coolant system specific activity since the main steam line break accident analysis assumed lower limits.

The accident radiological dose consequences analyses inputs, methodologies and outputs modified by this request are not accident initiators and do not affect the frequency of occurrence of previously analyzed transients. Likewise, the reactor coolant system specific activity limits are not accident initiators and do not affect the frequency of occurrence of previously analyzed transients.

The containment inservice purge system is not an accident initiator and therefore removal of its Technical Specifications does not involve an increase in the probability of an accident. The Technical Specification changes proposed in this license amendment request require the containment inservice purge system to be blind flanged during Modes 1, 2, 3, and 4, therefore removal of the containment ventilation isolation instrumentation Technical Specifications and other Technical Specification system operating requirements does not involve an increase in the consequences of an accident previously evaluated.

The loss of coolant accident and main steam line break accident radiological dose consequences analyses demonstrated the results are within the applicable regulatory limits and guidance using revised inputs, including the proposed lower Technical Specification reactor coolant system specific activity limits, and methodologies. Thus these changes do not involve a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes implementing revised loss of coolant accident and main steam line break accident dose consequence analyses to address modeling nonconservatisms and update the analyses for new fuel types and provide margin for power uncertainty. These analyses assumed that the containment inservice purge system penetrations are isolated, thus this license amendment request proposes Technical Specification revisions which will require these penetrations to be blind flanged during plant operations; these changes allow the Technical Specification requirements for containment ventilation isolation instrumentation to be removed. This license amendment request also proposes associated more restrictive limits in the Technical Specification for reactor coolant system specific activity since the main steam line break accident analysis assumed lower limits.

This license amendment request does not involve physical changes to the plant structures, systems or components and there is no adverse impact on component or system interactions due to the proposed changes. The modes of operation of the plant remain unchanged and the design functions of the safety systems remain in compliance with the applicable safety analysis acceptance criteria. These changes do not create new failure modes or mechanisms and no new accident precursors are generated.

When the containment inservice purge system is not being operated, current Technical Specifications require the system's penetrations to be blind flanged in Modes 1, 2, 3, and 4 to provide post-accident containment integrity. This license amendment proposes to require the system penetrations to be blind flanged at all times during these Modes and prevent operation of the system in these Modes. Since containment integrity is provided with the penetrations blind flanged and this change only extends the time during which the system is in this configuration, these changes do not create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes implementing revised loss of coolant accident and main steam line break accident dose consequence analyses to address modeling nonconservatisms and update the analyses for new fuel types and provide margin for power uncertainty. These analyses assumed that the containment inservice purge system penetrations are isolated, thus this license amendment request proposes Technical Specification revisions which will require these penetrations to be blind flanged during plant operations; these changes allow the Technical Specification requirements for containment ventilation isolation instrumentation to be removed. This license amendment request also proposes associated more restrictive limits in the Technical Specification for reactor coolant system specific activity since the main steam line break accident analysis assumed lower limits.

The loss of coolant accident and main steam line break accident radiological dose consequences analyses have incorporated revised inputs, including the proposed lower Technical Specification reactor coolant system specific activity limits, and utilized revised methodologies. The results of these revised analyses satisfy the applicable regulatory limits and guidance. There is no adverse effect on plant safety due to this proposed license amendment.

The containment inservice purge system is not credited for mitigation of any accidents or any other safety function, thus, removal of its associated Technical Specifications does not involve reduction in a margin of safety. The containment ventilation isolation instrumentation system is credited for isolation of the containment inservice purge system following an accident and the valves are assumed to meet containment integrity

leakage rate limits. This license amendment request proposes to require the containment inservice purge system containment penetrations to be blind flanged during Modes 1, 2, 3, and 4 and the blind flanged penetrations will be required to meet containment integrity leakage rate limits. With these changes, containment integrity is maintained in accordance with the current Technical Specification requirements, thus, this change does not involve reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Lois M. James.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 30, 2008.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8.3, ''Onsite Power Distribution Systems,'' to establish a separate TS Action statement for inoperable inverters associated with the 120 volt alternating current (VAC) distribution panels. The intent of the proposed amendment is to extend the allowed outage time for inoperable inverters from 8 hours to 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The inverters and associated 120 VAC distribution panels are not initiators to any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR).

The proposed change does not increase the number of inverters permitted to be inoperable at one time. With one or both inverters inoperable in a single channel, sufficient capacity and capability remain to assure required safety functions can be performed. The proposed changes do not involve any physical change to structures, systems, or components (SSCs) and do not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these proposed changes. The likelihood of previously analyzed failures remains unchanged.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No physical changes will be made to the plant or how the plant is operated. As such, no new or different kind of accident due to a credible new failure mechanism, malfunction, or accident initiator will be created as a result of this proposed change. Any alteration in procedures will continue to ensure that the plant remains within analyzed limits, and no change is required to the procedures relied upon to respond to an off-normal event as described in the UFSAR.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change would extend the allowed outage time for one or two inoperable inverters in a single channel. The proposed change does not increase the number of inverters permitted to be inoperable at one time. There is no change to any design basis or safety limits. Operation in accordance with the proposed TS ensures that the 120 VAC instrument distribution system is capable of performing its functions as described in the UFSAR.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: 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, and 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.

Brief description of amendment: 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 amendment revises the MPS3 Operating License and Technical Specifications necessary to implement the increased power level.

Date of issuance: August 12, 2008.

Amendment No.: 242.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Facility Operating License No. NPF–49: Amendment revised the License and Technical Specifications.

*Date of individual notice of issuance in **Federal Register**:* August 20, 2008 (73 FR 49222).

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: June 17, 2008.

Brief description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.9, Steam Generator (SG) Program, and TS 5.6.9, Steam Generator Tube Inspection Report. For TS 5.5.9, the amendment would incorporate a one-cycle interim alternate repair criteria in the provisions for SG tube

repair criteria during Byron, Unit No. 2, refueling outage 14 and the subsequent operating cycle. For TS 5.6.9, the amendment would revise the current reporting requirements. The proposed changes only affect Byron, Unit No. 2; however, they are docketed for both Byron units because the TSs are common to both units.

Date of publication of individual notice in ***Federal Register****:* August 5, 2008 (73 FR 45485).

Expiration date of individual notice: September 5, 2008 (public comment), October 5, 2008 (hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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 to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: May 10, 2007, as supplemented by letters dated January 10 and July 18, 2008.

Brief description of amendment: The amendment describes the long-term coupon surveillance program for the carborundum samples found in the Unit No. 1 spent fuel pool (SFP). The program verifies that the carborundum degradation rates assumed in the licensee's analyses to prove subcriticality, as required by Title 10 of the Code of Federal Regulations, Section 50.68, remain valid over the 70-year life span of the Unit No. 1 SFP.

Date of issuance: August 27, 2008.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 288.

Renewed Facility Operating License No. DPR–53: Amendment revised the License and fulfills the requirements identified in Appendix C, Additional Conditions, to Renewed Facility Operating License No. DPR–53 as further described in Amendment No. 267 issued on June 3, 2004.

Date of initial notice in ***Federal Register****:* June 19, 2007 (72 FR 33780).

The letters dated January 10 and July 18, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois; Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey; Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania; Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois; AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: July 19, 2007, as supplemented on July 7, 2008.

Brief description of amendment: The amendments will update the requirements in the Technical Specifications (TS) 5.3.1 ''Facility Staff Qualifications,'' or TS 6.3.1, ''Unit Staff Qualifications,'' that have been outdated based on licensed operator training programs accredited by the National Academy for Nuclear Training Academy Document, ACAD 00–003, Revision 1, dated April 2004, and the revised Title 10 of the Code of Federal Regulations, Part 55, ''Operators' Licenses.''

Date of issuance: July 25, 2008.

Effective Date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 152, 152, 156, 156, 180, 228, 220, 189, 176, 267, 267, 271, 240, 235, 265

Facility Operating License Nos. NPF–72, NPF–77, NPF–37 and NPF–66, NPF–62, DPR–19, DPR–25, NPF–11, NPF–18, DPR–16, DPR–55, DPR–56, DPR–29, DPR–30 and DPR–50: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register****:* December 4, 2007 (72 FR 68214). The supplemental letter contained clarifying information, did

not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 2008.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1, Goodhue County, Minnesota

Date of application for amendment: August 16, 2007, as supplemented by letter dated June 13, 2008.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) for Prairie Island Nuclear Generating Plant, Unit 1. The amendment revises TS 3.8.1 ''AC Sources—Operating'' to require monthly testing of the Unit 1 emergency diesel generators at or above 2500 kilowatts.

Date of issuance: August 15, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 187.

Facility Operating License No. DPR–42: Amendment revises the TSs.

*Date of initial notice in **Federal Register:*** January 28, 2008 (73 FR 5226).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated August 15, 2008.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 16, 2007, as supplemented by letter dated June 16, 2008.

Brief description of amendment: The amendment revises the Technical Specification (TS) requirements related to control room envelope habitability in TS 3.7.9, ''Control Room Emergency Air Treatment System (CREATS),'' and TS Section 5.5, ''Programs and Manuals.'' The changes are consistent with the Nuclear Regulatory Commission approved Industry/Technical Specification Task Force Traveler No. 448, Revision 3. The availability of this TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the consolidated line item improvement process.

Date of issuance: August 27, 2008.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 105.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** October 23, 2007 (72 FR 60035).

The June 16, 2008, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2008.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket No. 50–362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of application for amendments: September 24, 2007, as supplemented by letters dated February 22 and March 27, 2008.

Brief description of amendments: Approves the revision to the SONGS 3 Technical Specification 5.5.2.15, ''Containment Leakage Rate Testing Program,'' of a one-time extension from the currently approved 15-year interval since the last Integrated Leak Rate Test to a 16-year interval.

Date of issuance: August 15, 2008.

Effective date: to be implemented within 60 days of issuance.

Amendment No.: Unit 3–210.

Facility Operating License No. NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** October 23, 2007 (72 FR 60036). The supplements dated February 22 and March 27, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the U.S. Nuclear Regulatory Commission staff original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2008.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendment: March 26, 2008.

Brief description of amendment: The proposed amendment would revise the Updated Final Safety Analysis Report (UFSAR) to reflect approval to use the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program as the basis for demonstrating the compliance with the requirements of Appendix H to Title 10 of the Code of Federal Regulations Part 50, ''Reactor Vessel Material Surveillance Program Requirements.''

Date of issuance: August 14, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 273.

Renewed Facility Operating License No. DPR–33: Amendment revised the UFSAR.

*Date of initial notice in **Federal Register:*** June 3, 2008 (73 FR 31723).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 2008.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 20, 2007, as supplemented by letter dated March 12, 2008.

Brief description of amendment: The amendment revised Technical Specification 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' and its associated Surveillance Requirement 3.8.3.1 to increase the current minimum emergency diesel generator (EDG) fuel oil inventory required to be maintained onsite. The increase in minimum EDG fuel oil would provide conservative margin against potential vortex effects that could occur during fuel oil transfer pump operation.

Date of issuance: August 27, 2008.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 185.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** September 11, 2007 (72 FR 51866). The supplemental letter dated March 12, 2008, provided additional

information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2008.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

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 documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in

the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Exelon Generation Company, LLC, Docket No. 50–249, Dresden Nuclear Power Station, Unit 3, Grundy County, Illinois

Date of amendment request: August 18, 2008.

Description of amendment request: The amendment revises Technical Specification 3.4.5, ''RCS Leakage Detection Instrumentation,'' to support implementation of an alternative method of verifying that unidentified leakage in the drywell is within limits.

Date of issuance: August 22, 2008.

Effective date: As of the date of issuance and shall be implemented by 12:00 pm CDT on August 24, 2008.

Amendment No.: 221.

Facility Operating License No. DPR–25: Amendment revises the technical specifications and the operating license.

Public comments requested as to proposed no significant hazards consideration (NSHC):

No. On August 17, 2008, the staff issued a Notice of Enforcement Discretion, which was effective immediately and remained in effect until this amendment was issued.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 22, 2008.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation.

NRC Branch Chief: Russell Gibbs.

Dated at Rockville, Maryland, this 29th day of August 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–20567 Filed 9–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282–LR, 50–306–LR; ASLBP No. 08–871–01–LR–BD01]

Nuclear Management Company, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Nuclear Management Company, LLC (Prairie Island Nuclear Generating Plant, Units 1 and 2)

This proceeding involves an application for renewal of the licenses that authorize Nuclear Management Company, LLC to operate Prairie Island Nuclear Generating Plant, Units 1 and 2 for a twenty-year period beyond their current expiration dates of, respectively, August 9, 2013 and October 29, 2014. In response to a June 17, 2008 Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing (73 FR 34,335), a petition to intervene has been submitted by Philip R. Mahowald on behalf of the Prairie Island Indian Community.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Thomas J. Hirons, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 3rd day of September 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E8–20849 Filed 9–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–243; EA–08–251]

In the Matter of: Oregon State University (Oregon State University TRIGA Reactor); Order Modifying Facility Operating License No. R–106

I

Oregon State University (the licensee) is the holder of Facility Operating License No. R–106 (the license), issued by the U.S. Nuclear Regulatory Commission (NRC). The NRC plans to renew the license on September 10, 2008. The license authorizes operation of the Oregon State University TRIGA Reactor (the facility) at a power level up to 1,100 kilowatts thermal and in the pulse mode, with reactivity insertions not to exceed $2.55, and to receive, possess, and use special nuclear material associated with facility operation. The facility is a research reactor located on the campus of Oregon State University, in the city of Corvallis, Benton County, Oregon. The mailing address is Radiation Center, Oregon State University, 100 Radiation Center, Corvallis, Oregon 97331–5903.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.64, limits the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors) (see 51 FR 6514). The regulation, which became effective on March 27, 1986, requires that if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel develop and submit to the Director of the Office of Nuclear Reactor Regulation (the Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency. The proposal should also provide a schedule for conversion, based upon the availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, the facility, and licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with the protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if not all cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202).

Any person, other than the licensee, whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene meeting the requirements of 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''

III

The U.S. Nuclear Regulatory Commission (NRC) maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. On November 6, 2007, the licensee submitted its conversion proposal (ADAMS Accession No. ML080420546), which was supplemented on February 11, and June 20, 2008 (ADAMS Accession Nos. ML080730057 and ML082350345), including its proposed modifications and supporting safety analyses. HEU fuel elements are to be replaced with LEU fuel elements. The reactor core contains fuel elements of the TRIGA design, with the fuel consisting of uranium-zirconium hydride with 30 weight percent uranium. These fuel elements contain the uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64 and has determined that public health and safety and common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the attachments to this Order and the schedule included herein. The attachments to this Order specify the changes to the license conditions and technical specifications that are needed to amend the facility license and contain an outline of a reactor startup report to be submitted to NRC within 6 months following return of the converted reactor to normal operation.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *it is hereby ordered that:*

Facility Operating License No. R–106 is modified by amending the license conditions and technical specifications as stated in the attachments to this Order (Attachment 1: MODIFICATIONS TO FACILITY OPERATING LICENSE No. R–106; Attachment 2: OUTLINE OF REACTOR STARTUP REPORT). The Order becomes effective on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel elements to operate the facility as specified in the licensee proposal dated November 6, 2007 (ADAMS Accession No. ML080420546), as supplemented on February 11, and June 20, 2008 (ADAMS Accession Nos. ML080730057 and ML082350345), or (2) 20 days after the date of publication of this Order in the **Federal Register**.

V

Pursuant to 10 CFR 2.202, any person(s) whose interest may be affected by this proceeding, other than the licensee, and who wishes to participate as a party in the proceeding must file a written request within 20 days after the date of publication of this Order, setting forth with particularity the manner in which this Order adversely affects his or her interest and addressing the criteria set forth in 10 CFR 2.309. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC issued the E-filing final rule on August 28, 2007 (72 FR 49139), and codified it in pertinent part at 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' subpart B. The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least 10 days before the filing deadline, the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating, and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on the NRC's public Web site at *http://*

www.nrc.gov/site-help/e-submittals/apply-certificates.html.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for a hearing through EIE. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., eastern time, Monday through Friday. The help line number is (800) 397–4209 or, locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a fair use application, participants are requested not to include copyrighted materials in their works.

If a hearing is requested and the request is granted by the Commission, the NRC will issue an order designating the time and place of the hearing.

In the absence of any request for hearing, the provisions as specified in Section IV shall be final twenty (20) days after the date of publication of this Order in the **Federal Register**.

In accordance with 10 CFR 51.10(d) this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9), no environmental assessment or environmental impact statement is required.

Detailed guidance which the NRC uses to review applications from research reactor licensees appears in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' February 1996, which can be obtained from the Commission's Public Document Room (PDR). The public may also access NUREG–1537 through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Nos. ML0412430055 for part one and ML042430048 for part two.

For further information see the application from the licensee dated November 6, 2007 (ADAMS Accession No. ML080420546), as supplemented on February 11, and June 20, 2008 (ADAMS Accession Nos. ML080730057 and ML082350345), the NRC staff's requests for additional information (ADAMS Accession Nos. ML080090308 and ML081050294), and the cover letter to the licensee and the staff's safety evaluation dated September 4, 2008, (ADAMS Accession No. ML082390775). On April 4, 2008, the NRC staff issued an Order to the licensee to allow receipt and possession of the special nuclear material needed for the conversion (ADAMS Accession No. ML080730395). These documents are available for public inspection at the Commission's Public Document Room (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 Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who have problems accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Dated this 4th day of September 2008.

For the Nuclear Regulatory Commission

James T. Wiggins,

Deputy Director, Office of Nuclear Reactor Regulation.

ATTACHMENT 1—Modifications to Facility Operating License NO. R–106

A. License Conditions Revised by This Order

2.B.(2) Pursuant to the Act and 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,''

a. To receive, possess and use, in connection with operation of the facility, up to 16.30 kilograms of contained uranium-235 enriched to less than 20 percent in the form of TRIGA reactor fuel;

b. To receive, possess and use, in connection with operation of the facility, up to 100 grams of contained uranium-235 of any enrichment in the form of fission chambers and flux foils;

c. To receive, possess, but not use, up to 656 grams of uranium-235 enriched to less than 20 percent in the form of the core from the AGN–201 reactor;

d. To receive, possess, use, but not separate, in connection with operation of the facility, such special nuclear material as may be produced by operation of the facility; and

e. To possess, but not use, up to 12.83 kilograms of contained uranium-235 at equal to or greater than 20 percent enrichment in the form of TRIGA fuel until the existing inventory of this fuel is removed from the facility.

2.C.(2) *Technical Specifications*

The Technical Specifications contained in Appendix A, as revised through Amendment No. 22, are hereby incorporated in the license. The licensee shall operate the facility

in accordance with the Technical Specifications.

ATTACHMENT 2—Outline of Reactor Startup Report

Within 6 months following the return of the converted reactor to normal operation, submit the following information to the NRC. Information on the HEU core should be presented to the extent it exists.

1. Critical mass:
Measurement with HEU;
Measurement with LEU;
Comparisons with calculations for LEU and if available, HEU.
2. Excess (operational) reactivity:
Measurement with HEU;
Measurement with LEU;
Comparisons with calculations for LEU and if available, HEU.
3. Control rod calibrations:
Measurement of HEU and LEU rod worths and comparisons with calculations for LEU and if available, HEU.
4. Reactor power calibration:
Methods and measurements that ensure operation within the license limit and comparison between HEU and LEU nuclear instrumentation set points, detector positions and detector output.
5. Shutdown margin:
Measurement with HEU;
Measurement with LEU;
Comparisons with calculations for LEU and if available, HEU.
6. Thermal neutron flux distributions:
Measurements of the core and measured experimental facilities (to the extent available) with HEU and LEU and comparisons with calculations for LEU and if available, HEU.
7. Reactor physics measurements:
Results of determination of LEU effective delayed neutron fraction, temperature coefficient, and void coefficient to the extent that measurements are possible and comparison with calculations and available HEU core measurements.
8. Initial LEU core loading:
Measurements made during initial loading of the LEU fuel, presenting subcritical multiplication measurements, predictions of multiplication for next fuel additions, and prediction and verification of final criticality conditions.
9. Primary coolant measurements:
Results of any primary coolant water sample measurements for fission product activity taken during the first 30 days of LEU operation.
10. Results of any test pulses performed and comparison with calculations and available HEU core measurements.
11. Discussion of results:
Discussion of the comparison of the various results including an explanation of any significant differences that could affect normal operation and accident analyses.

[FR Doc. E8–20997 Filed 9–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–027; EA–08–250]

In the Matter of Washington State University (Washington State University TRIGA Reactor); Order Modifying Facility Operating License No. R–76

I

Washington State University (the licensee) is the holder of Amended Facility Operating License No. R–76 (the license) originally issued on March 6, 1961, by the U.S. Atomic Energy Commission and subsequently renewed on August 11, 1982, by the U.S. Nuclear Regulatory Commission (the NRC or the Commission). The license authorizes operation of the Washington State University TRIGA Reactor (the facility) at a power level up to 1,000 kilowatts thermal and to receive, possess, and use special nuclear material associated with the operation. The facility is a research reactor located on the campus of the Washington State University, in the city of Pullman, Whitman County, Washington. The mailing address is Nuclear Radiation Center, Washington State University, P.O. Box 641300, Pullman, Washington 99164–1300.

II

Title 10 of the Code of Federal Regulations (10 CFR) Section 50.64, limits the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors) (see 51 FR 6514). The regulation, which became effective on March 27, 1986, requires that if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel develop and submit to the Director of the Office of Nuclear Reactor Regulation (the Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency. The proposal should also provide a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, the facility, and licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with the protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if not all cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202).

Any person, other than the licensee, whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene meeting the requirements of 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''

III

The U.S. Nuclear Regulatory Commission (NRC) maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the

NRC's public documents. On August 15, 2007 (ADAMS Accession Nos. ML072410493 and ML080170058), as supplemented on December 14, 2007 (ADAMS Accession No. ML080090628), and January 15 (ADAMS Accession No. ML080170037), June 13, (ADAMS package Accession No. ML082380270 which consists of ADAMS Accession Nos. ML082380265, ML082380266, ML082380267, ML082380268, ML082380269, ML082380271, ML08238272, ML082380273 and ML082380279) and August 4, (ADAMS Accession No. ML082210118), 22, (ADAMS Accession No. ML082390030), and 25, 2008 (ADAMS Accession No. ML082400522), the NRC staff received the licensee's conversion proposal, including its proposed modifications and supporting safety analyses. HEU fuel elements are to be replaced with LEU fuel elements. The reactor core contains fuel clusters, each fuel cluster contains up to four fuel elements of the TRIGA design, with the fuel consisting of uranium-zirconium hydride with 30 weight percent uranium. These fuel elements contain the uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64 and has determined that public health and safety and common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the attachments to this Order and the schedule included herein. The attachments to this Order specify the changes to the license conditions and technical specifications that are needed to amend the facility license and contains an outline of a reactor startup report to be submitted to NRC within 6 months following return of the converted reactor to normal operation.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *it is hereby ordered that:*

Amended Facility Operating License No. R–76 is modified by amending the license conditions and technical specifications as stated in the attachments to this Order (Attachment 1: MODIFICATIONS TO FACILITY OPERATING LICENSE No. R–76; Attachment 2: OUTLINE OF REACTOR STARTUP REPORT). The Order becomes effective on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel elements to operate the facility as specified in the licensee proposal dated August 15, 2007 (ADAMS Accession Nos. ML072410493 and ML080170058), as supplemented on December 14, 2007 (ADAMS Accession No. ML080090628), and January 15, (ADAMS Accession No. ML080170037), June 13, (ADAMS package Accession No. ML082380270 which consists of ADAMS Accession Nos. ML082380265, ML082380266, ML082380267, ML082380268, ML082380269, ML082380271, ML08238272, ML082380273 and ML082380279) and August 4, (ADAMS Accession No.ML082210118), 22, (ADAMS Accession No. ML082390030), and 25, 2008 (ADAMS Accession No. ML082400522), or (2) 20 days after the date of publication of this Order in the **Federal Register**.

V

Pursuant to 10 CFR 2.202, any person(s) whose interest may be affected by this proceeding, other than the licensee, and who wishes to participate as a party in the proceeding must file a written request within 20 days after the date of publication of this Order, setting forth with particularity the manner in which this Order adversely affects his or her interest and addressing the criteria set forth in 10 CFR 2.309. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC issued the E-filing final rule on August 28, 2007 (72 FR 49139) and codified it in pertinent part at 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' subpart B. The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least 10 days before the filing deadline, the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating, and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for a hearing through EIE. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., eastern time, Monday through Friday. The help line number is (800) 397–4209 or, locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) First class mail addressed to the Office

of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a fair use application, participants are requested not to include copyrighted materials in their works.

If a hearing is requested and granted by the Commission, the NRC will issue an order designating the time and place of any hearing.

In the absence of any request for hearing, the provisions as specified in Section IV shall be final twenty (20) days after the date of publication of this Order in the **Federal Register**.

In accordance with 10 CFR 51.10(d) this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9), no environmental assessment or environmental impact statement is required.

Detailed guidance which the NRC uses to review applications from research reactor licensees appears in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' February 1996, which can be obtained from the Commission's Public Document Room (PDR). The public may also access NUREG–1537 through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Nos. ML0412430055 for part one and ML042430048 for part two.

For further information see the application from the licensee dated August 15, 2007 (ADAMS Accession Nos. ML072410493 and ML080170058), as supplemented on December 14, 2007 (ADAMS Accession No. ML080090628), and January 15, (ADAMS Accession No. ML080170037), June 13, (ADAMS package Accession No. ML082380270 which consists of ADAMS Accession Nos. ML082380265, ML082380266, ML082380267, ML082380268, ML082380269, ML082380271, ML08238272, ML082380273 and ML082380279) and August 4, (ADAMS Accession No. ML082210118), 22, (ADAMS Accession No. ML082390030), and 25, 2008 (ADAMS Accession No. ML082400522), the NRC staff's requests for additional information (ADAMS Accession Nos. ML073240018, ML080460523 and ML082250618), and the cover letter to the licensee and the staff's safety evaluation dated September 4, 2008 (ADAMS Accession No. ML082401484). On January 23, 2008, the NRC staff issued an Order to the licensee to allow receipt and possession of the special nuclear material needed for the conversion (ADAMS Accession No. ML073550839). These documents are available for public inspection at the Commission's Public Document Room (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 ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*

Dated this 4th day of September 2008.

For the Nuclear Regulatory Commission.

James T. Wiggins,

Deputy Director, Office of Nuclear Reactor Regulation.

Attachment 1—Modifications To Facility Operating License No. R–76

A. License Conditions Revised by This Order

2.B.(2) Pursuant to the Act and 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material'', to receive, possess, and use in connection with operation of the reactor:

a. Up to 25 kilograms of contained uranium-235 enriched to less than 20 percent in the form of TRIGA reactor fuel.

b. Up to 500 grams of contained uranium-235 enriched to any enrichment in the form of nuclear detectors and material for experimental research.

c. Up to 32 grams of plutonium in the form of a plutonium-beryllium neutron source.

2.B.(4) Pursuant to the Act and 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' to possess, but not use, up to 15 kilograms of contained uranium–235 at equal to or greater than 20 percent enrichment in the form of TRIGA fuel until the existing inventory of this fuel is removed from the facility.

2.C.(2) *Technical Specifications*

The Technical Specifications contained in Appendix A, as revised through Amendment No. 20 are, hereby, incorporated in the license. The licensee shall operate the facility in accordance with the Technical Specifications.

Attachment 2—Outline of Reactor Startup Report

Within 6 months following the return of the converted reactor to normal operation, submit the following information to the NRC. Information on the HEU core should be presented to the extent it exists.

1. Critical mass:

Measurement with HEU;

Measurement with LEU;

Comparisons with calculations for LEU and if available, HEU.

2. Excess (operational) reactivity:

Measurement with HEU;

Measurement with LEU;

Comparisons with calculations for LEU and if available, HEU.

3. Regulating and safety control rod calibrations:

Measurement of HEU and LEU rod worths and comparisons with calculations for LEU and if available, HEU.

4. Reactor power calibration:

Methods and measurements that ensure operation within the license limit and comparison between HEU and LEU nuclear instrumentation set points, detector positions and detector output.

5. Shutdown margin:

Measurement with HEU;

Measurement with LEU;

Comparisons with calculations for LEU and if available, HEU.

6. Thermal neutron flux distributions:

Measurements of the core and measured experimental facilities (to the extent available) with HEU and LEU and comparisons with calculations for LEU and if available, HEU.

7. Reactor physics measurements:

Results of determination of LEU effective delayed neutron fraction, temperature coefficient, and void coefficient to the extent that measurements are possible and comparison with calculations and available HEU core measurements.

8. Initial LEU core loading:

Measurements made during initial loading of the LEU fuel, presenting subcritical

multiplication measurements, predictions of multiplication for next fuel additions, and prediction and verification of final criticality conditions.

9. Primary coolant measurements:

Results of any primary coolant water sample measurements for fission product activity taken during the first 30 days of LEU operation.

10. Pulse Measurements:

Results of any test pulses performed and comparison with calculations and available HEU core measurements.

11. Discussion of results:

Discussion of the comparison of the various results including an explanation of any significant differences that could affect normal operation and accident analyses.

[FR Doc. E8–20998 Filed 9–8–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of September 8, 15, 22, 29, October 6, 13, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 8, 2008

9:30 a.m. Affirmation Session (Public Meeting). (Tentative)

a. U.S. Department of Energy (High Level Waste Repository) DOE's Partially Unopposed Motion for Protective Order Governing Classified Information (filed May 30, 2008). (Tentative)

b. U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters), Docket No. PAPO–00—The DOE's Notice of Appeal from the PAPO Board's April 23, 2008 Order and Nye County's Motion to File an Amicus Curiae Brief—SRM—SECY–08–0082. (Tentative)

Week of September 15, 2008—Tentative

There are no meetings scheduled for the week of September 15, 2008.

Week of September 22, 2008—Tentative

There are no meetings scheduled for the week of September 22, 2008.

Week of September 29, 2008—Tentative

There are no meetings scheduled for the week of September 29, 2008.

Week of October 6, 2008—Tentative

There are no meetings scheduled for the week of October 6, 2008.

Week of October 13, 2008—Tentative

There are no meetings scheduled for the week of October 13, 2008.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http: //www.nrc.gov/about-nrc/policy-making/schedule.html.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 4, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–20969 Filed 9–5–08; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 18, 2008 Board of Directors Meeting

Time and Date: Thursday, September 18, 2008, 10 a.m. (Open Portion). 10:15 a.m. (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

Matters to be Considered:

1. President's Report
2. Approval of July 17, 2008 Minutes (Open Portion)

Further Matters to be Considered: (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee
2. Finance Project—Costa Rica, El Salvador, Guatemala, Honduras
3. Finance Project—Liberia
4. Finance Project—South Africa
5. Finance Project—Mexico, Nicaragua, El Salvador, Peru, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Cambodia, Bosnia, Kenya
6. Finance Project—Botswana
7. Finance Project—Bulgaria and the Balkans
8. Finance Project—Asia
9. Finance Project—South Asia
10. Finance Project—Global
11. Finance Project—Global
12. Finance Project—Global
13. Finance Project—Global
14. Finance Project—Latin America
15. Finance Project—Latin America
16. Finance Project—Latin America
17. Finance Project—Mexico and Central America
18. Finance Project—Central and South America
19 Finance Project—Latin America, Pakistan and Georgia
20. Approval of July 17, 2008 Minutes (Closed Portion)
21. Pending Major Projects
22. Reports

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 3, 2008.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. E8–20959 Filed 9–5–08; 11:15 am]

BILLING CODE 3210–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical

utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007 Under Section 7(b)(3) of the Railroad Retirement Act (RRA), and section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision on his or her application for an annuity or benefit under that Act has the right to appeal to the RRB. This right is prescribed in 20 CFR part 260 and 20 CFR part 320. The notification letter sent to the individual at the time of the original action on the application informs the applicant of such right. When an individual protests a decision, the concerned bureau reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that if he or she wishes to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The procedure pertaining to the filing of such an appeal is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

The form prescribed by the RRB for filing an appeal under the RRA or RUIA is form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act*. The form asks the applicant to furnish the basis for the appeal and what additional evidence, if any, is to be submitted. Completion is voluntary, however if the information is not provided the RRB cannot process the appeal.

The RRB proposes to remove items from Form HA–1 that request the appellant to provide their social security number or RRB Claim number. No other changes are proposed. The completion time for the HA–1 is estimated at 20 minutes per response. The RRB estimates that approximately 650 Form HA–1's are completed annually. Annual burden for the collection is estimated at 217 hours.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–20789 Filed 9–8–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–58454]

Order Granting Application for Exemption Pursuant to Section 36(a) of the Exchange Act by the Philadelphia Stock Exchange, Inc. From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

September 3, 2008.

I. Introduction

On June 27, 2007,[1] the Philadelphia Stock Exchange, Inc., n/k/a NASDAQ OMX PHLX, Inc., (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Rule 0–12 [2] under the Securities Exchange Act of 1934 (''Exchange Act'') an application for an exemption under Section 36(a)(1) of the Exchange Act [3] from the rule filing requirements of Section 19(b) of the Exchange Act [4] with respect to certain margin rules of other self-regulatory organizations (''SROs'') that the Exchange seeks to incorporate by reference.

II. Application for Section 36 Exemption From Section 19(b) Rule Filing Requirements for SRO Rules Incorporated by Reference

On August 11, 2008, the Commission approved a proposed rule change—SR-Phlx–2007–33—which, among other things, permits Phlx members to elect to be bound by the margin rules of either the New York Stock Exchange LLC (''NYSE'') or the Chicago Board Options Exchange, Incorporated (''CBOE'').[5] More specifically, Phlx amended its Rule 721 to state a member organization must elect to be bound by the initial and maintenance margin requirements of either the NYSE or CBOE as the same may be in effect and amended from time to time.[6] Phlx Rule 721 further states that upon the filing of such election, a Phlx member shall be bound to comply with the margin rules of the NYSE or CBOE, as applicable, as though said rules were part of Phlx's margin rules. On June 26, 2007, Phlx submitted a formal request, pursuant to Rule 0–12 under the Exchange Act,[7] seeking an exemption under Section 36 of the Exchange Act from the rule filing procedures of Section 19(b) of the Exchange Act with respect to changes to the margin rules of either the NYSE or CBOE.[8]

III. Order Granting Section 36 Exemption

Section 36 of the Exchange Act [9] authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors. The Commission believes that it is appropriate to issue exemptions, subject to the conditions described below, to allow SROs to incorporate by reference the rules of other SROs without being subject to the rule filing requirements of Section 19(b) of the Exchange Act whenever the SRO's rules that are incorporated by reference change. Such exemptions promote efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.

The Commission will consider granting requests for exemption, pursuant to Section 36 of the Exchange Act, from the rule filing requirements imposed by Section 19(b) of the Exchange Act, provided that:[10]

[1] *See* Letter from Edith H. Hallahan, Esq., Senior Vice President and Deputy General Counsel, Phlx, to Nancy M. Morris, Secretary, Commission, dated June 26, 2007.

[2] 17 CFR 240.0–12.

[3] 15 U.S.C. 78mm(a)(1).

[4] 15 U.S.C. 78s(b).

[5] *See* Exchange Act Release 58340, 73 FR 48268 (August 18, 2008).

[6] Exchange Act Release No. 58340 (August 11, 2008); *see also* Exchange Act Release No. 58045 (June 26, 2008), 73 FR 38487 (July 7, 2008) (SR-Phlx–2007–33).

[7] *See* 17 CFR 240.0–12.

[8] *See* Letter from Edith H. Hallahan, Esq., Senior Vice President and Deputy General Counsel, Phlx, to Nancy M. Morris, Secretary, Commission, dated June 26, 2007.

[9] 15 U.S.C. 78mm.

[10] Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

(1) An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SROs, together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;[11]

(2) an incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.*, the SRO has requested incorporation of rules such as margin, suitability, arbitration); and

(3) the incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.

The Commission believes that it is appropriate to issue an exemption, subject to the conditions described above, to allow Phlx to incorporate by reference the margin rules of the NYSE or CBOE (by allowing its members to elect to be bound by the margin rules of either the NYSE or CBOE), without being subject to the rule filing requirements of Section 19(b) of the Exchange Act whenever the SRO's margin rules that are incorporated by reference change. The Commission believes that this exemption will promote more efficient use of Commission and Phlx resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. The Commission notes in granting this exemption, that Phlx by incorporating by reference another SRO's margin rules would agree to be governed by the incorporated rules, as amended from time to time, but not be required to file a separate proposed rule change with the Commission each time either the NYSE or CBOE seeks to modify its margin rules.

Phlx is requesting to incorporate by reference the whole category of the NYSE and CBOE margin rules (*i.e.*, did not ''cherry-pick'' certain individual rules within a category), which are regulatory rules and not trading rules. The Commission also has previously approved the incorporation by reference of the NYSE and CBOE margin rules for the International Securities Exchange and the Boston Options Exchange.[12] The Commission notes that the Exchange previously requested, and the Commission granted, a request by Phlx to incorporate by reference, the NASD Code of Arbitration Procedure, subject to certain conditions.[13] Consistent with the conditions attendant to its prior exemptive request, the Exchange has agreed to continue to provide written notice to its members whenever the NYSE or CBOE proposes a change to its margin rules.[14] This procedure will provide Phlx members with notice of a proposed rule change that affects their interests, so that they would have the opportunity to comment on it.

For the reasons discussed above, the Commission finds that the exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,[15] that Phlx, with respect to the margin rules of the NYSE and CBOE that Phlx proposes to incorporate by reference as specified above, and subject to the conditions described above, shall be exempt from rule filing requirements of Section 19(b) of the Exchange Act to the extent that Section 19(b) would otherwise require submission of a proposed rule change filing with the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20809 Filed 9–8–08; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* 17 CFR 240.0–12 and Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

[12] Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

[13] *See* Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

[14] *See supra* note 1.

[15] 15 U.S.C. 78mm.

[16] 17 CFR 200.30–3(a)(76).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58445; File No. SR–BSE–2008–43]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Transfer of Ownership of MX U.S. 2, Inc.

August 29, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the BSE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting the proposed rule change to the Commission to amend the proposed Sixth Amended and Restated Operating Agreement (''BOX LLC Agreement''), of the Boston Options Exchange Group LLC (''BOX LLC''), in connection with the transfer by the Montréal Exchange Inc.,[4] a company incorporated in Québec, Canada (''MX''), of its ownership interest in MX U.S. 2, Inc., a U.S. subsidiary of MX (''MX U.S. 2'').[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.bostonstock.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not otherwise defined herein shall have the meanings set forth in the BOX LLC Agreement.

[4] The Montréal Exchange Inc. is also known in French as the Bourse de Montréal Inc.

[5] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–25).

may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate BOX as an options trading facility of the Exchange.[6] MX owns a 100% ownership interest in MX U.S. 2, which holds a 31.37% ownership interest in BOX LLC.[7] MX has transferred 100% of its common stock ownership interest in MX U.S. 2 to MX U.S. 1, Inc., a wholly owned U.S. subsidiary of MX (''MX U.S. 1'') (''Common Stock Transfer''). 3226507 Nova Scotia Company, a Nova Scotia, Canada unlimited liability company, a subsidiary of MX (''NSULC 2''), has also acquired 100% of the preferred stock of MX U.S. 2 (''Preferred Stock Transfer''). NSULC 2 is a direct subsidiary of MX and 3226506 Nova Scotia Company, a Nova Scotia, Canada unlimited liability company and a wholly owned subsidiary of MX (''NSULC 1''). Furthermore, NSULC 1 has acquired 0.1% of the common stock of NSULC 2 (''NSULC 2 Transfer'' and collectively with the Common Stock Transfer and the Preferred Stock Transfer, the ''Transfers'').

The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instruments of Accession in connection with the Transfers. As a result of the Transfers, MX U.S. 2 is a direct subsidiary of MX U.S. 1 and NSULC 2.

Pursuant to section 8.4(g) of the BOX LLC Agreement, as previously approved by the Commission, BOX LLC is required to amend the BOX LLC Agreement to make a Controlling Person[8] a party to the BOX LLC Agreement if such Controlling Person establishes a Controlling Interest[9] in any BOX Member that, alone or together with any Affiliate of such BOX Member, holds a Percentage Interest in BOX equal to or greater than 20%.[10] Pursuant to the Common Stock Transfer and the Preferred Stock Transfer, MX U.S. 1 and NSULC 2 have acquired a Controlling Interest in MX U.S. 2, which owns a 31.37% ownership interest in BOX LLC and will own a 53.24% ownership interest in BOX LLC upon the consummation of the BSE Transfer. MX U.S. 1 and NSULC 2, as Controlling Persons, are required to and will become parties to the BOX LLC Agreement pursuant to the proposed Instruments of Accession. Furthermore, NSULC 1, which acquired 0.1% of the common stock ownership interest in NSULC 2, a direct subsidiary of MX that holds an ownership interest in 100% of the preferred shares of MX U.S. 2 that holds and will hold an interest in BOX that is greater than twenty percent of all outstanding BOX ownership interests, is also required to and will become a party to the BOX LLC Agreement. As a result, MX U.S. 1, NSULC 1 and NSULC 2 will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.[11]

For the reasons stated above, the BSE is submitting to the Commission the proposed Instruments of Accession to the BOX LLC Agreement as a rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(1),[13] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of section 6(b)(5) of the Act[14] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

[6] *See* Securities Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the BSE would delegate its self-regulatory functions with respect to the BOX facility); Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

[7] Upon the consummation of the Exchange's transfer of its 21.87% ownership interest in BOX to MX U.S. 2, MX U.S. 2 will hold a 53.24% ownership interest in BOX (''BSE Transfer''). *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–25).

[8] A ''Controlling Person'' is defined as ''a Person who, alone or together with any Affiliate of such Person, holds a controlling interest in a [BOX] Member.'' *See* Section 8.4(g)(v)(B), BOX LLC Agreement.

[9] A ''Controlling Interest'' is defined as ''the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Affiliate of such Person.'' *See* Section 8.4(g)(v)(A), BOX LLC Agreement.

[10] *See* Section 8.4(g), BOX LLC Agreement.

[11] The BOX LLC states, in part, that ''the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.'' *See* BOX LLC Agreement, Section 19.6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5).

interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] The Exchange has requested that the Commission waive the 5-day pre-filing requirement and the 30-day operative delay.[19] The Commission believes that waiving the 5-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because BSE has represented that the Instruments of Accession will be executed on August 29, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instruments of Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[21]

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–BSE–2008–43 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–BSE–2008–43. 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 BSE. 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–BSE–2008–43 and should be submitted on or before September 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20869 Filed 9–8–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See* Email from Lisa J. Fall, General Counsel and Corporate Secretary, BOX, to Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on August 29, 2008.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* 15 U.S.C. 78s(b)(3)(C).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58443; File No. SR–NYSE–2008–79]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Reduce the Monthly Fee for NYSE Realtime Reference Prices

August 29, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2008, the New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the fixed monthly fee that applies to its ''NYSE Realtime Reference Prices'' service, a service that the Exchange is currently providing on a pilot test basis. There is no new rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–NYSE–2007–04 (the ''NYSE Realtime Reference Prices

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Filing''),[3] the Exchange established a pilot program to provide a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The Exchange intends for the NYSE Realtime Reference Prices service to provide a low-cost service that will make real-time prices widely available to many millions of casual investors, to provide vendors with a real-time substitute for delayed prices, and to relieve vendors of all administrative burdens.

The pilot program, which is currently scheduled to terminate on November 1, 2008, allows internet service providers, traditional market data vendors, and others (''NYSE-Only Vendors'') to make available NYSE Realtime Reference Prices on a real-time basis.[4] NYSE Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange. It includes only prices. It does not include the size of each trade and does not include bid/asked quotations.

During the pilot program, the Exchange will not permit NYSE-Only Vendors to provide NYSE Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The NYSE Realtime Reference Price pilot program features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements. For the duration of the pilot program, the Exchange established a monthly flat fee that entitles a vendor to receive access to the NYSE Realtime Reference Prices datafeed. The vendor may use that access to provide unlimited NYSE Realtime Reference Prices to an unlimited number of the vendor's subscribers and customers.

The Exchange set the flat fee at $100,000 per month. The purpose of this proposed rule change is to reduce the flat monthly fee from $100,000 to $70,000. This fee enables vendors to make NYSE Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The Exchange believes that the existing fee enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. After consultation with some of the entities that have shown the most interest in the service, and after a few months of experience with the product, the Exchange believes that the proposed reduction in NYSE Realtime Reference Prices pilot program fees will make the product more attractive to vendors. An increase in the number of vendors that determine to provide free access to NYSE Realtime Reference prices to their internet users would benefit the investment community. The fee reduction will also respond to the price competition provided by alternative exchanges, ECNs and the market for delayed data. In addition, it will better reflect the perceived value of the NYSE product and provide a more equitable allocation of the Exchange's overall costs to users of its facilities.

In modifying the level of the NYSE Realtime Reference Prices pilot program fee, the Exchange also took into consideration such other factors as:

(1) The fees that Nasdaq and other markets are charging for similar services;

(2) The contribution of market data revenues that the Exchange believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed fees;

(3) The contribution that revenues accruing from the proposed fees will make to meeting the overall costs of the Exchange's operations;

(4) Projected losses to the Exchange's other sources of market data revenues (e.g., from its share of revenues derived from Network A nonprofessional subscriber fees) as a result of the NYSE Realtime Reference Prices service competing with those services;

(5) The savings in administrative and reporting costs that the NYSE Realtime Reference Prices service will provide to NYSE-Only Vendors; and

(6) The fact that the proposed fees provide an alternative to existing Network A fees under the CTA Plan, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

Prior to the end of the pilot program period, the Exchange will assess its experience with the product. It either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or will announce publicly that it does not seek to extend the pilot program beyond the pilot program's termination date.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In light of the Exchange's experience with the NYSE Realtime Reference Prices pilot program and after consultation with entities participating in the pilot program, the Exchange believes that the proposed reduction of the NYSE Realtime Reference Prices fee is equitable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has discussed the proposed rules change with entities that are participating in the pilot program. While those entities have not submitted formal, written comments on the proposal, the Exchange has consulted with them regarding the NYSE Realtime Reference Prices fee and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–79 on the subject line.

[3] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008).

[4] The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–79 and should be submitted on or before September 30, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to be implemented for the remainder of the pilot period, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, it is consistent with section 6(b)(4) of the Act,[6] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of section 6(b)(8) of the Act,[8] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[9] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[10]

The Commission notes that the proposal reduces the flat monthly fee for NYSE Realtime Reference Prices from $100,000 per month to $70,000 per month without reducing the amount of data received through NYSE Realtime Reference Prices. In addition, the Commission notes that the reduced fee will apply for the remainder of the pilot period. The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until October 31, 2008. On June 4, 2008, the Commission approved for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products that would encompass the NYSE Realtime Reference Prices.[11] The Commission believes that the proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. Pending review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving NYSE's proposal to reduce the monthly fee for the remainder of the pilot period would be beneficial to investors and in the public interest, in that it should result in increased broad public dissemination of real-time pricing information. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the NYSE Realtime Reference Prices beyond the pilot period.

The Commission notes that the Exchange reconsidered the original factors it used to establish the fee for NYSE Realtime Reference Prices in determining the proposed reduced flat monthly fee. In addition, the Commission notes that the Exchange's experience with NYSE Realtime Reference Prices, consultation with entities that have shown the most interest in NYSE Realtime Reference Prices, and price competition provided by other market data products were considered by NYSE in determining to reduce the flat monthly fee.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal should benefit investors by facilitating their access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices. In addition, the Commission notes that the proposal should benefit vendors that make real-time pricing information available by reducing their monthly fees. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[12] to approve the proposed rule change on an accelerated basis only for a pilot period to expire on October 31, 2008, while the Commission analyzes comments on the Draft Approval Order.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2008–79) is hereby approved on an accelerated basis until October 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20807 Filed 9–8–08; 8:45 am]

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[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

[9] 17 CFR 242.603(a).

[10] NYSE is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[11] *See* Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) (''Draft Approval Order'').

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58450; File No. SR–NYSE–2008–78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 18 To Allow NYSE Alternext US LLC To Participate in the Compensation Fund Established by the NYSE To Reimburse Claimants for Losses Associated With NYSE-Operated System Failures

September 2, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 26, 2008, the New York Stock Exchange LLC (''NYSE'' 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 comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 18 (Compensation in Relation to Exchange System Failure) to provide, as part of the migration of NYSE Alternext US LLC (''NYSE Alternext'') trading onto systems and facilities operated by NYSE for the benefit of NYSE Alternext, that NYSE Alternext may participate in the compensation fund established by the Exchange to reimburse claimants for losses associated with Exchange-operated system failures. The text of the proposed rule change is available at NYSE's principal office, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposal is to amend NYSE Rule 18 to provide that NYSE Alternext will be permitted to participate in the compensation fund established by the Exchange to reimburse claimants for Exchange-operated system failures.

Background

As described more fully in a related rule filing, NYSE Euronext is expected to acquire The Amex Membership Corporation through a series of mergers (the ''Mergers'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger Agreement'').[4] Upon completion of the Mergers, the American Stock Exchange LLC (''Amex''), currently a subsidiary of The Amex Membership Corporation, will become a subsidiary of NYSE Euronext and will continue to operate as a national securities exchange registered under the Act.[5] Following the Mergers, the name of the new exchange will be NYSE Alternext US LLC.[6]

In connection with the Mergers, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to the NYSE trading systems and facilities located at 11 Wall Street, New York, New York (the ''NYSE Alternext Trading Systems''), which will be operated by the NYSE on behalf of NYSE Alternext (the ''Equities Relocation''). NYSE Euronext has determined that extending its existing trading systems and facilities to NYSE Alternext will be more efficient than maintaining two separate trading platforms for trading equities. At the same time, because NYSE Euronext reports its financial results on a consolidated basis, it does not plan to break out and allocate technology costs between New York Stock Exchange LLC (the registered self-regulatory organization that owns and operates the NYSE market) and NYSE Alternext US LLC (the registered self-regulatory organization that will own and operate the NYSE Alternext equities market after the merger is complete).

In connection with the Equities Relocation, NYSE Alternext will adopt NYSE Rules 1–1004 in substantially their existing form as the ''NYSE Alternext Equities Rules.'' [7] Because the NYSE Alternext Trading Systems will be operated by the NYSE for the benefit of NYSE Alternext, the NYSE Alternext Equities Rules will be substantively identical to the existing NYSE Rules, subject to certain changes necessary to apply such rules to NYSE Alternext.

Among the rules that NYSE Alternext is adopting is a version of NYSE's Rule 18, which establishes that NYSE Alternext members may be compensated for losses incurred as a result of an NYSE Alternext system malfunction (NYSE Alternext rules elsewhere provide that the exchange is not liable for losses resulting from the use of its systems or facilities), and prescribes the procedures for submitting claims to the fund. If there is a system malfunction, NYSE Alternext members will be able to submit claims to NYSE Alternext pursuant to that rule.

Under NYSE's Rule 18, the Exchange has established a monthly fund, described in more detail below, from which valid compensation claims are paid. Because of the consolidated accounting referenced above, however, NYSE Euronext does not intend to establish a separate compensation fund for NYSE Alternext members under NYSE Alternext's Rule 18. Instead, NYSE Alternext members who submit claims will be paid directly by NYSE Alternext. Through this filing, the Exchange is providing a mechanism for NYSE Alternext itself to seek reimbursement for the amounts that it undertakes to pay out to its members under its Rule 18 as a result of an NYSE system malfunction.

Current NYSE Rule 18 and Proposed NYSE Alternext Rule 18

NYSE Rule 18, adopted by the Exchange in 2007, provides a procedure for compensating claimants in the event of an Exchange system failure.[8] In its

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR–Amex–2008–62).

[5] 15 U.S.C. 78f.

[6] As noted, Amex will be renamed NYSE Alternext US LLC. For the avoidance of doubt, NYSE Alternext US LLC will be a self-regulatory organization distinct from NYSE Euronext's European-market subsidiary, NYSE Alternext. *See* SR–Amex–2008–62.

[7] *See* Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR–Amex–2008–63).

[8] *See* Securities Exchange Act Release Nos. 56085 (July 17, 2007), 72 FR 40348 (July 24, 2007) (SR–NYSE–2007–09) (adopting NYSE Rule 18); 56718 (October 29, 2007), 72 FR 62506 (November 5, 2007) (SR–NYSE–2007–95) (approving certain amendments to NYSE Rule 18). NYSE Rule 18 defines an Exchange system failure as a ''malfunction of the Exchange's physical

Continued

filing to amend its rules, Amex has proposed to adopt substantially the same rule. Accordingly, the process described below will be the same process for members of both NYSE and NYSE Alternext.

Both rules require claimants to informally notify their respective Exchanges of a suspected Exchange system failure by the opening of the next business day following an incident, followed by formal written notice no later than end of the third business day after the incident.[9] Net losses less than $500 are not eligible for compensation. Upon receipt of a claim, Exchange staff from the Division of Floor Operations verify that (i) a valid order was accepted into the Exchange's systems, and (ii) an Exchange system failure occurred during the execution or handling of that order. If all of the criteria for submitting a claim have been met, the claim will be qualified for processing with all other eligible claims at the end of the calendar month in which the incident occurred.[10]

Each Exchange will appoint a Compensation Review Panel consisting of three Floor Governors and three Exchange employees, who will meet and review all qualified claims submitted for each calendar month and administer any payments to be made thereon. As part of their determinations, the respective Compensation Review Panels review the actions of the claimant before and after the error occurred in order to determine if any of the claimant's actions contributed to the loss sustained. The Compensation Review Panels may increase or reduce the amount deemed eligible for payment as a result of their review. All decisions by the respective Compensation Review Panel are final, except that where there is a deadlock, the final determination will be made by the Exchange CEO or a designee.[11]

Payment of Valid Claims

Currently, claims by NYSE members are paid from a compensation fund established by the Exchange. Each month the Exchange allots $500,000 (''Monthly Allotment'') to be used for payments to NYSE member claimants who qualify for compensation under NYSE Rule 18. The Monthly Allotments do not aggregate and, in the event that less than $250,000 of the Monthly Allotment is paid out in any given month, $50,000 of the remaining Monthly Allotment (''Supplemental Allotment'') is added to a supplemental fund available for payment in subsequent calendar months. The Supplemental Allotment is used to pay NYSE member claims only after the Monthly Allotment is exhausted. If NYSE member claims are satisfied by the Monthly Allotment, the Supplemental Allotment, or any unused portion thereof, is carried forward.[12]

If the total dollar amount of approved NYSE member claims is less than the Monthly Allotment, then all claims will be paid in full. If the total amount of approved NYSE member claims exceeds the Monthly Allotment, then any Supplemental Allotment will be added to the Monthly Allotment in order to satisfy approved claims. In the event that the approved claims for a given month exceed the sum of the Monthly Allotment and any Supplemental Allotment, the approved claims will be paid out to claimants based on the proportion that each eligible claim bears to the total amount of all approved claims.[13]

Proposed Amendments

The Exchange proposes to amend NYSE Rule 18 to add supplemental material permitting NYSE Alternext to participate alongside NYSE members in the compensation fund established by the Exchange to reimburse claimants for Exchange-operated system failures.

As described above, upon the Equities Relocation, all equities trading currently conducted on Amex legacy trading systems will take place on the NYSE Alternext Trading Systems, which are the same trading systems as those of the Exchange. As a result, any system failure on the Exchange will affect equally both NYSE members and member organizations and NYSE Alternext members and member organizations. Through the proposed amendments, the Exchange wants to ensure that members and member organizations of both SROs are treated fairly and equitably in the event of such a system failure, while maintaining and respecting the distinctions between them.

Under the proposed amendments, NYSE Alternext members and member organizations affected by the failure of the NYSE Alternext Trading Systems would submit claims for compensation to NYSE Alternext pursuant to the proposed NYSE Alternext Equities Rule 18.[14] NYSE Alternext members and member organizations would not be able to submit their claims directly to the NYSE. NYSE Alternext's Compensation Review Panel will then decide the validity of NYSE Alternext claims.

After its Compensation Review Panel has determined the number and amount of claims that NYSE Alternext deems valid, NYSE Alternext would submit to the NYSE a separate claim for each valid claim made by NYSE Alternext members or member organizations, subject to the same requirements under NYSE Rule 18 as any other NYSE claimant. NYSE Alternext will not, however, be required to provide verbal notice of its claims to the Exchange's Division of Floor Operations.

In the event that the total amount of valid claims by NYSE members and NYSE Alternext exceeds the available funds, NYSE Alternext would receive a partial payment of claims pursuant to NYSE Rule 18(c), and NYSE Alternext's obligation to compensate its members for valid claims would be reduced by a like percentage. In view of (i) The probable volume of trading on NYSE Alternext; (ii) the fact that to date, the existing compensation fund has been sufficient to pay all valid claims in full; and (iii) the current amount available in the supplemental fund, the Exchange does not anticipate that the additional claims by NYSE Alternext would create a substantial burden on the fund in the event of a system malfunction

In the event that a reduction is required, in calculating any such reduction, NYSE officials would consider each claim submitted by NYSE Alternext as a separate claim, so that all claimants from both the Exchange and NYSE Alternext will share equitably from the Compensation Fund. As described more fully in the related filing by Amex, payments against valid claims submitted by NYSE Alternext members are subject to being reduced by the amount that NYSE Alternext's claims against the NYSE fund are reduced.

The Exchange also proposes technical changes to NYSE Rule 18, including renumbering subparagraphs (c)(iv)–(c)(vi), accordingly.

equipment, devices, and/or programming which results in an incorrect execution or no execution of an order that was received in Exchange systems.'' However, misuse of Exchange systems is not considered such a system failure. *See* NYSE Rule 18(b). As proposed by Amex, upon the Equities Relocation, those systems and facilities will be deemed systems and facilities of NYSE Alternext for the purposes of administering NYSE Alternext's compensation plan.

[9] Because NYSE will operate the systems and facilities for NYSE Alternext, there may not be a separate ''Division of Floor Operations'' for NYSE Alternext. A member of the NYSE's Floor Operations staff will be cross-designated as the Floor Operations representative for NYSE Alternext for purposes of the NYSE Alternext rules that require interfacing with the Division of Floor Operations. NYSE Alternext members would submit their claims to this representative.

[10] *See* NYSE Rule 18(a).

[11] *See* NYSE Rule 18(d)–(f).

[12] *See* NYSE Rule 18(c).

[13] *See* NYSE Rule 18(c).

[14] *See* SR–Amex–2008–63.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[15] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed amendments to NYSE Rule 18 will enhance the efficient execution of transactions and fair competition among broker-dealers and markets and provide a fair and reasonable process by which both NYSE members and member organizations and NYSE Alternext members and member organizations may petition for compensation when they suffer a loss due to a failure of Exchange-operated systems.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–78 and should be submitted on or before September 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20808 Filed 9–8–08; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78f(b)(5).

[16] The second paragraph of the Statutory Basis section appears in the Form 19b–4 portion of SR–NYSE–2008–78 filing, but not in Exhibit 1. In a phone call with Jason Harman, Consultant, NYSE Regulation on September 2, 2008, Sarah Albertson, Attorney, Division of Trading and Markets, SEC, confirmed that NYSE inadvertently omitted this paragraph of the Statutory Basis section in Exhibit 1. Mr. Harman asked that the paragraph be included as the second paragraph under the Statutory Basis heading in this Notice.

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 10, 2008.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, 202–205–7530 *gail.hepler@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: In November 2005 SBA piloted a 1-year loan program specifically targeted to the counties and parishes that were declared disaster areas as a result of Hurricanes Katrina and Rita. This pilot was extended to December 30, 2008. Lenders use primarily their own application, however, SBA requires the minimal information requested on these forms from lenders and borrowers to carry out its loan monitoring, portfolio risk management, and lender oversight activities associated with this loan pilot.

Title: ''Gulf Coast Relief Financing Pilot Information Collection.''

Description of Respondents: Small businesses devastated by Hurricanes Katrina and Rita.

Form Numbers: 2276 A, B, C and 2281.

Annual Responses: 120.

Annual Burden: 180.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–20930 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11409 and #11410]

Florida Disaster Number FL–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA—1785—DR), dated 08/26/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing.

Effective Date: 09/01/2008.

Physical Loan Application Deadline Date: 10/27/2008.

EIDL Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 08/26/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Duval, Lee, Leon, Seminole, Wakulla.

Contiguous Counties: (Economic Injury Loans Only):

Florida: Baker, Clay, Franklin, Gadsden, Jefferson, Liberty, Nassau, Saint Johns.

Georgia: Grady, Thomas.

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. E8–20843 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster Number FL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–1785–DR), dated 08/24/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing.

Effective Date: 08/31/2008.

Physical Loan Application Deadline Date: 10/23/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/25/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 08/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alachua, Calhoun, Dixie, Duval, Hamilton, Jefferson, Lake, Leon, Liberty, Marion, Osceola, Putnam, Seminole, St. Johns, Wakulla.

Contiguous Counties (Economic Injury Loans Only):

Florida: Bay, Citrus, Flagler, Franklin, Gilchrist, Gulf, Lafayette, Levy, Madison, Taylor, Sumter, Suwannee.

Georgia: Brooks, Echols, Lowndes, Thomas.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–20844 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster Number FL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–1785–DR), dated 08/24/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing.

Effective Date: 08/26/2008.

Physical Loan Application Deadline Date: 10/23/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/25/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 08/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Baker, Bradford, Collier, Gadsden, Glades, Hardee, Hendry, Union.

Contiguous Counties (Economic Injury Loans Only):

Florida: Alachua, Broward, Calhoun, Charlotte, Clay, Columbia, De Soto, Duval, Hillsborough, Jackson, Lee, Leon, Liberty, Manatee, Nassau, Putnam.

Georgia: Charleton, Clinch, Decatur, Grady, Seminole, Ware.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–20845 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11412 and #11413]

Illinois Disaster # IL–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 09/02/2008.

Incident: Severe Storms and Flooding.

Incident Period: 03/17/2008 through 04/30/2008.

Effective Date: 09/02/2008.

Physical Loan Application Deadline Date: 11/03/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/02/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alexander, Gallatin, Pulaski, Saline, Williamson.

Contiguous Counties:

Illinois: Franklin, Hamilton, Hardin, Jackson, Johnson, Massac, Pope, Union, White.

Indiana: Posey.

Kentucky: Ballard. McCracken. Union.

Missouri: Cape Girardeau, Mississippi, Scott.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	5.500
Homeowners Without Credit Available Elsewhere:	2.750
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 11412 6 and for economic injury is 11413 0.

The States which received an EIDL Declaration # are Illinois, Indiana, Kentucky, Missouri.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 2, 2008.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–20841 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11418 and #11419;

Louisiana Disaster # LA–00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1786–DR), dated 09/02/2008.

Incident: Hurricane Gustav.

Incident Period: 09/01/2008 and continuing.

EFFECTIVE DATE: 09/02/2008.

Physical Loan Application Deadline Date: 11/03/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/02/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/02/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes (Physical Damage and Economic Injury Loans):

Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, Saint Bernard, Saint Charles, Saint James, Saint Landry, Saint Martin, Saint Mary, St John The Baptist, Terrebonne, Vermilion, Vernon, West Baton Rouge, West Feliciana.

Contiguous Parishes / Counties (Economic Injury Loans Only):

Louisiana: Calcasieu, Catahoula, Concordia, De Soto, Grant, La Salle, Natchitoches, Saint Helena, Saint Tammany, Tangipahoa.

Mississippi: Amite, Wilkinson.

Texas: Jefferson, Newton, Orange, Sabine, Shelby.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 114188 and for economic injury is 114190.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–20929 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11335]

Michigan Disaster Number MI–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Michigan (FEMA–1777–DR), dated 07/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/06/2008 through 06/13/2008.

Effective Date: 08/27/2008.

Physical Loan Application Deadline Date: 09/12/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 04/14/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Michigan, dated 07/14/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Saginaw.

Contiguous Counties (Economic Injury Loans Only):

Bay, Genesee, Gratiot, Midland, Tuscola.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–20834 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11311 and #11312]

Missouri Disaster Number MO–00030

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1773–DR), dated 06/28/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 through 07/18/2008.

Effective Date: 08/27/2008.

Physical Loan Application Deadline Date: 09/10/2008.

Eidl Loan Application Deadline Date: 03/30/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Missouri, dated 06/28/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 09/10/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–20846 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11414 and #11415]

Nebraska Disaster # NE–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Nebraska dated 09/02/2008.

Incident: Severe Thunderstorms, Heavy Rain, Hail and Straight Line Winds.

Incident Period: 06/27/2008.

Effective Date: 09/02/2008.

Physical Loan Application Deadline Date: 11/03/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/02/2009.

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: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Douglas.

Contiguous Counties:

Nebraska: Dodge, Sarpy, Saunders, Washington.

Iowa: Pottawattamie.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	5.375
Homeowners Without Credit Available Elsewhere:	2.687
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 11414 B and for economic injury is 11415 0.

The States which received an EIDL Declaration # are Nebraska, Iowa.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 2, 2008.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–20842 Filed 9–8–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6352]

Determination Related to Serbia Under Section 699D(c) of the Department of State, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161)

Pursuant to the authority vested in me as Secretary of State, including under Section 699D(c) of the Department of State, Foreign Operations, Export Financing, and Related Programs Appropriations Act (FOAA), 2008 (Div. J, Pub. L. 110–161), and similar provisions related to Serbia in prior year FOAAs, and the President's Delegation of Responsibilities Related to the Federal Republic of Yugoslavia, dated March 22, 2001, I hereby determine and certify that the Government of Serbia is:

(1) Cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic and Radovan Karadzic;

(2) Taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain

separate Republika Srpska institutions; and

(3) Taking steps to implement policies which reflect a respect for minority rights and the rule of law.

This Determination and related Memorandum of Justification shall be provided to the appropriate committees of the Congress. This Determination shall be published in the **Federal Register**.

Dated: September 2, 2008.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E8–20914 Filed 9–8–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 6345]

Defense Trade Advisory Group; Notice of Meeting October 21, 2008

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet on October 21, 2008 from 9:30 a.m. to 1 p.m. in the Loy Henderson Conference Room at the U.S. Department of State, Harry S. Truman Building, Washington, DC. The meeting will be open to the public. Entry and registration will begin at 8:45. Please use the building entrance located at 23rd Street, NW., Washington, DC between C&D Streets. The purpose of the meeting will be to discuss current defense trade issues and topics for further study.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Tuesday, October 14, 2008. If notified after this date, the DTAG Secretariat cannot guarantee that the Department's Bureau of Diplomatic Security can complete the necessary processing required to attend the October 21 plenary. Each non-member observer or DTAG member needing building access that wishes to attend this plenary session should provide: His/her name; company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG Secretariat contact person, Allie Frantz, via e-mail at *FrantzA@state.gov.* DTAG members planning to attend the plenary session should notify the DTAG Secretariat contact person, Allie Frantz, at the e-mail provided above. A RSVP list will be provided to Diplomatic Security and the Reception Desk at the 23rd Street Entrance. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, U.S. passport, U.S. Government ID or other valid photo ID.

DATES: The DTAG meeting will be held on October 21, 2008 from 9:30 a.m. to 1 p.m. and is open to the public.

ADDRESSES: The meeting will be held in the Loy Henderson Conference Room at the U.S. Department of State, Harry S. Truman Building, Washington, DC. DTAG members and non-member observers are required to pre-register due to security reasons.

FOR FURTHER INFORMATION CONTACT: Members of the public who need additional information regarding these meetings or the DTAG should contact the DTAG Executive Secretariat contact person, Allie Frantz, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 736–9220; FAX (202) 261–8199; or e-mail *FrantzA@state.gov.*

SUPPLEMENTARY INFORMATION:

(a) Background

The membership of this advisory committee consists of private sector defense trade representatives who advise the Department on policies, regulations, and technical issues affecting defense trade. Individuals interested in defense trade issues are invited to attend and will be able to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

October 21, 2008 9:30 a.m. to 1 p.m. Meeting—Topics for discussion and assigned time frames are as follows: 9:30–9:45 Call to order by DTAG Chairman, followed by Opening Remarks from Department of State Official(s). 9:45–10 Update on the three topics addressed at the June 19, 2008 open plenary; Self-Financing Options for the Directorate of Defense Trade Controls (including the DTAG Working Group's presentation of their report), the UK-US Defense Trade Cooperation Treaty Implementing Regulations, and the new USML Category VIII regulations implementing Section 17(c) of the Export Administration Act. 10–11:15 DTAG Working Group on the U.S. Munitions List (USML) Review presentation. 11:30–12:45 DTAG Working Group on ITAR Definitions presentation. 12:45–1 Closing Remarks.

(b) Availability of Materials for the Meetings

The agenda and materials pertaining to the topics for discussion will be posted on the Directorate of Defense Trade Controls' Web site at *http://pmddtc.state.gov/index.htm* no later than October 17, 2008.

(c) Procedures for Providing Public Comments

The DTAG will accept written public comments as well as oral public comments. Comments should be relevant to the topics for discussion. Public participation at the open meeting will be based on recognition by the chair and may not exceed 5 minutes per speaker. Written comments should be sent to the DTAG Executive Secretariat contact person no later than October 14, 2008 so that the comments may be made available to the DTAG members for consideration. Written comments should be supplied to the DTAG Executive Secretariat contact person at the mailing address or email provided above, in Adobe Acrobat or Word format.

Note: The DTAG operates under the provisions of the Federal Advisory Committee Act, as amended, and all public comments will be made available for public inspection, and might be posted on DDTC's Web site.

(d) Meeting Accommodations

Individuals requiring special accommodation to access the open meeting referenced above should contact Ms. Frantz at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 4, 2008.

Robert S. Kovac,

Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. E8–20912 Filed 9–8–08; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2008–0259; OMB Control No.: 2106–0009]

Pricing and Multilateral Affairs Division; Agency Information Collection Activities; Request for Comments; [Renewed Approval of] Information Collection: Exemption From Passenger Tariff-filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual Passenger Tariffs

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation, (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, this notice announces the Department of Transportation (DOT), Office of the Secretary's (OST) intention to request clearance and renewal of a previously approved information collection. This Information Collection Request (ICR) describes the nature of the information collection and its expected burden. The purpose of this notice is to allow the public to submit comments on our application to renew ICR 2106–0009, 14 CFR Part 221—Constructing, Publications, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers. The pre-existing information collection request previously approved by OMB expires on September 30, 2008.

DATES: Written comments should be submitted by: November 10, 2008.

ADDRESSES: For submitting comments: Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail or Hand Delivery: U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590.

Fax comments: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: John Kiser, 202–366–2435 or Bernice Gray, 202–366–2418, Pricing and Multilateral Affairs Division, Office of the Secretary, Department of Transportation, 1200 New Jersey Avenue, SE., Room W86–319 or W86–433, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Exemption from Passenger Tariff-filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual Passenger Tariffs.

OMB Control No.: 2106–0009.

Type of Request: Extension of a currently approved information collection.

Background: Section 41504 of Title 49 of the United States Code, requires every U.S. and foreign air carrier to file with the Department and keep open for public inspection, tariffs showing all prices for ''foreign air transportation'' between points served by that carrier, as well as all the rules relating to that transportation to the extent required by the Department. This requirement includes passenger fares, related charges and governing rules. The detailed tariff-filing rules and authority for approvals, rejections, and waivers are established by 14 CFR Part 221. Once tariffs are allowed to become effective by the Department, these tariffs become legally binding terms in the contract of carriage for international air transportation.

In several rulemaking proceedings, the Department determined that the amount of tariff material filed by carriers exceeded our regulatory requirements in certain respects; that alternative methods existed for protecting consumers and other elements of the public interest that are more effective than filed tariffs; and that procedures should be developed to foster the electronic filing and the review of those tariffs, which should continue to be filed. On November 30, 1995, the Department published a final rule (Exemption From Property Tariff-Filing Requirement for 14 CFR Parts 221 and 292, Docket No. 49827) exempting carriers from their regulatory duty to file tariffs for foreign air transportation of cargo.

In the final rule (Notice of Exemption from Passenger Tariff-Filing Requirements In Certain Instances, Docket OST–97–2050–12), issued July 21, 1999, the Department determined that the filing of certain tariffs with the Department for foreign air transportation of passengers is no longer necessary or appropriate, and accordingly granted another exemption from the tariff-filing requirement set forth in Part 221. The rule also required that all remaining tariffs be filed electronically. A substantial number of provisions in Part 221 were removed, where redundant or out-dated given present regulatory practices existed.

On October 7, 1999, the Assistant Secretary issued a notice under 14 CFR Part 293, Notice of Exemption from the Department's Tariff-Filing Requirement, Docket OST–97–2050–14, specifying the terms of the exemptions for markets in Category A (no fare filing(s), Category B (normal one-way economy fare filing(s) only or Category C (filing all fares), taking into account specific factors present in each market. The notice also specified which general rules must continue to be filed.

On September 12, 2005, the Assistant Secretary issued a Notice of Exemption from the Department's Tariff-Filing Requirements, Docket OST–97–2050–15, updating the list of countries added to the tariff-filing exemptions under 14 CFR 293 for country-pair markets, transferring more countries between categories, and increasing the number of exempted countries from the tariff-filing requirements.

On April 8, 2008, the Assistant Secretary issued a third notice (Notice of Exemption from the Department's Tariff-Filing Requirements, Docket OST–97–2050–18), updating the list of countries added to the tariff-filing exemptions under 14 CFR 293 for country-pair markets, transferring more countries between categories and increasing the number of exempted countries from the tariff-filing requirements. Most of the changes in the 2005 and 2008 notices moved countries into Category A (not fare filing(s), reflecting the increasing number of ''open skies'' air services agreements between the United States and its trading partners. The effect on the burden hours can not be determined at this time for the newest updated list of tariff-filing exemptions. Because of exemptions that have been granted to U.S. and foreign carriers from the statutory and regulatory duty to file international passenger tariffs for many markets, the burden of such filings has been substantially reduced. When the final rule was issued in July 1999, we estimated the total annual burden on respondents at 650,000 hours. In 2007, the Department received 45,840 electronic filings, with an estimated annual burden of 229,200 burden hours. This reflected the fact that fewer markets were subject to filing requirements, but the reduction was tempered somewhat by a higher frequency of filings in markets still subject to filing. Considering these offsetting factors, we anticipate a modest further reduction of burden in the future.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Frequency: The information will be collected annually.

Estimated Average Burden per Response: 5 hours.

Estimated Total Annual Burden Hours: 229,200.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) 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; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated

collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: August 29, 2008.

Patricia Lawton,

IT Policy Oversight, Office of the Chief Information Officer.

[FR Doc. E8–20851 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2009–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP)

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

ACTION: Notice of criteria and application procedures for designation or redesignation, for the fiscal year 2009 MAP.

SUMMARY: In anticipation of congress enacting an extension of the Airport Improvement Program (AIP) the FAA is publishing this annual notice. This notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the MAP. While FAA currently has continuing authority to designate or redesignate airports, FAA does not have authority to issue grants for fiscal year 2009 MAP, and will not have authority until Congress enacts legislation enabling FAA to issue grants.

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from the Airport Improvement Program (AIP). The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1994) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. Sec. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or (2) the airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas, or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Applications must be received on or before November 10, 2008.

ADDRESSES: Submit an original and two copies of *Standard Form (SF) 424,* ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2009 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports are also eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year (FY) may participate in the MAP. There are 5 slots available for designation or redesignation in FY 2009. There is no general aviation slot available this year.

Term of Designation

The maximum term is five fiscal years following designation. The FAA can designate airports for a period of less than five years. The FAA will evaluate the conversion needs of the airport in its capital development plan to determine the appropriate length of designation.

Redesignation

Previously designated airports may apply for redesignation of an additional term not to exceed five years. Those airports must meet current eligibility requirements in 49 U.S.C. 47118(a) at the beginning of each grant period and have MAP eligible projects. The FAA will evaluate applications for redesignation primarily in terms of warranted projects fundable only under the MAP as these candidates tend to have fewer conversion needs than new candidates. The FAA wants MAP airports to graduate to regular AIP participation.

Eligible Projects

In addition to eligible AIP projects, MAP can fund fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet. Designated or redesignated military airports can receive not more than $7,000,000 for each fiscal year after 2005 for projects to construct, improve, or repair terminal building facilities. Designated or redesignated military airports can receive not more than $7,000,000 for each fiscal year after 2005 for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(1) The airport is a former military installation closed or realigned under:

(A) Section 2687 of Title 10;

(B) Section 201 of the Defense Authorization Amendments and Base

Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations; and

(3) The airport is classified as a commercial service or reliever airport in the NPIAS. (See 49 U.S.C. 47105(b)(2).) One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 49 U.S.C. 47102(1), (20)) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (See 49 U.S.C. 47118(g).) A general aviation airport must qualify under (1) above.

In designating new candidate airports, the Secretary shall consider if a grant will:

(1) Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed projects would contribute to reducing delays and/or how the airport would enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently realigned or closed military airports, as well as active military airfields with new joint-use agreements, have the greatest need of funding to convert to, or to incorporate, civil airport operations. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airports five-year Airport Capital Improvement Plan (ACIP). These projects need to be related to development of that airport and/or the air traffic control system capacity.

1. The FAA will evaluate candidate airports and/or the airports such candidate airports will relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve, or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of commercial service anticipated, i.e., scheduled or charter commercial service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs that, if funded, will make the airport a viable civil airport that will enhance system capacity or reduce delays.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424, Application for Federal Assistance, and provide supporting documentation to the appropriate FAA Airports regional or district office serving that airport.

Standard Form 424: Sponsors may obtain this fillable form at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc* .

Applicants should fill this form out completely, including the following:

- Mark Item 1, Type of Submission as a ''pre-application'' and indicate it is for ''construction.''
- Mark item 8, Type of Application as ''new,'' and in ''other,'' fill in ''Military Airport Program.''
- Fill in Item 11, Descriptive Title of Applicants Project. ''Designation (or redesignation) to the Military Airport Program.''

In Item 15a, Estimated Funding, indicate the total amount of funding requested from the MAP during the entire term for which you are applying.

Supporting Documentation

(A) Identification as a Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by Department of Defense (DOD) pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date the property was deeded to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. A general aviation airport applying for the MAP may be joint-use but must also qualify under (1) or (2) above.

(B) Qualifications for MAP:

Submit documents for (1) through (7) below:

(1) Documentation that the airport meets the definition of a ''public airport'' as defined in 49 U.S.C. Sec. 47102(20).

(2) Documentation indicating the required environmental review for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement has been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. To meet AIP requirements the environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or assures that good title will be acquired.

(3) For a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or longer to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Federal

Government is sufficient to indicate the eligible airport sponsor holds or will hold satisfactory title or a long-term lease.

(4) For a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. For all first time applicants a copy of the existing joint-use agreement must be submitted with the application. This is necessary so the FAA can legally issue grants to the sponsor. Here and in (3) directly above, the airport must possess the necessary property rights in order to accept a grant for its proposed projects during FY 2009.

(5) Documentation that the airport is classified as a ''commercial service airport'' or a ''reliever airport'' as defined in 49 U.S.C. 47102(7) and 47102(22), unless the airport is applying for the general aviation slot.

(6) Documentation that the airport owner is an eligible airport ''sponsor'' as defined in 49 U.S.C. 47102(24).

(7) Documentation that the airport has an FAA approved airport layout plan (ALP) and a five-year airport capital improvement plan (ACIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(C) Evaluation Factors:

Submit information on the items below to assist in our evaluation:

(1) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(2) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport. Include how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or enhance capacity in a metropolitan area or reduce current and projected flight delays.

(3) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near the airport. Include a discussion of whether operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(4) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity, and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(5) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint-use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected (e.g., safety-related, conversion-related, and/or capacity-related), must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

- Modification of airport or military airfield for safety purposes, including airport pavement modifications (e.g., widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in 14 CFR part 77.
- Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.
- Modifications, which will permit the airfield to accommodate general aviation users.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(6) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(7) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(8) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should also be included. You may also provide photos, which would further describe the airport, projects, and otherwise clarify certain aspects of this application. These maps and ALPs should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program must submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports

must indicate their application is for redesignation to the MAP. In addition to the above information, they must explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation not to exceed five years;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport; and

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on September 3, 2008.

Wayne Heibeck,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. E8–20759 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0272]

Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Medical Review Board (MRB) Public Meeting.

SUMMARY: FMCSA announces a public meeting of the Agency's MRB. The MRB public meeting will provide the public an opportunity to observe and participate in MRB deliberations about FMCSA's medical standards, in accordance with the Federal Advisory Committee Act (FACA).

DATES: The MRB meeting will be held from 9 a.m.–12:45 p.m. on Monday, October 6, 2008. Please refer to the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

ADDRESSES: The meeting will take place at the Embassy Suites Old Town Alexandria, 1900 Diagonal Road, Virginia Ballroom-Salon A, Alexandria, VA 22314. You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2008–0272 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jennifer Musick at 703–998–0189 ext. 237.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the meeting includes:

0900–0920 Call to Order, Introduction and Agenda Review
0920–0930 Medical Review Board (MRB) Administrative Discussion
0930–1000 Hearing and Commercial Motor Vehicle (CMV) Driver Safety Evidence Report
1000–1015 Public Comment on Hearing and CMV Driver Safety
1015–1030 MRB Deliberations on Hearing and CMV Driver Safety
1030–1100 Psychiatric Disorders and CMV Driver Safety—Evidence Report Findings
1100–1130 MRB Discussions on Psychiatric Disorders and CMV Driver Safety
1130–1200 MRB Discussions on Stroke and CMV Driver Safety
1200–1230 Public Comment on Psychiatric and Stroke Disorders and CMV Driver Safety
1245 Call to Adjourn

* Breaks will be announced on meeting day and may be adjusted according to schedule changes, other meeting requirements.

Background

The U.S. Secretary of Transportation announced on March 7, 2006, the five medical experts who serve on FMCSA's Medical Review Board (MRB). Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Public Law 109–59) requires the Secretary of Transportation with the advice of the MRB to ''establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them to operate the vehicles safely.'' FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with the Federal Advisory Committee Act (FACA) as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as making recommendations for new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

Meeting Participation

Attendance is open to the interested public, including medical examiners,

motor carriers, drivers, and representatives of medical and scientific associations. Written comments for this MRB meeting will also be accepted beginning on *September 9, 2008* and continuing until October 20, 2008, and should include the docket ID that is listed in the **ADDRESSES** section.

During the MRB meeting (1200–1230), oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: *http://www.fmcsa.dot.gov/mrb*.

Issued on: September 3, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20887 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–6480; FMCSA–02–11714; FMCSA–03–14223; FMCSA–04–17195; FMCSA–05–21254; FMCSA–06–24015; FMCSA–06–24783]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on August 20, 2008.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 11 renewal applications, FMCSA renews the Federal vision exemptions for Manuel A. Almeida, Ronald B. Brown, Thomas L. Corey, Brian G. Hagen, Donald E. Hathaway, John C. Lewis, William R. Proffitt, Jose M. Suarez, Louis E. Villa, Jr., Barney J. Wade, and Richard A. Yeager.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 3, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20890 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2008–0267]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 39 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before October 9, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2008–0267 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-

addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 39 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Joseph L. Bartolomei

Mr. Bartolomei, 56, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bartolomei meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Michael B. Bennington, Sr.

Mr. Bennington, 32, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bennington meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Keith A. Callahan

Mr. Callahan, age 29, has had ITDM since 1995. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Callahan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

John E. Coppedge

Mr. Coppedge, 54, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coppedge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Roland D. Demers

Mr. Demers, 55, has had ITDM since 1984. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Demers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Gary J. Drackert

Mr. Drackert, 53, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Drackert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Larry J. Eischens

Mr. Eischens, 60, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eischens meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

James L. Erviti

Mr. Erviti, 59, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Erviti meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Richard C. Frost

Mr. Frost, 56, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frost meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from California.

Charles W. Garrison

Mr. Garrison, 51, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garrison meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maryland.

Timothy W. Goforth

Mr. Goforth, 52, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goforth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he as stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Oregon.

Chad C. Gittings

Mr. Gittings, 32, has had ITDM since 1995. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gittings meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

David J. Hanzl

Mr. Hanzl, 38, has had ITDM since 1987. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanzl meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

John A. Hayes

Mr. Hayes, 47, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hayes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

Thomas R. Jones

Mr. Jones, 39, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

David H. Keawe

Mr. Keawe, 61, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keawe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Hawaii.

James G. Keesling

Mr. Keesling, 60, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keesling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Indiana.

Chadwick A. Lang

Mr. Lang, 34, has had ITDM since 1989. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has

stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lang meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from North Dakota.

Barry D. Langley

Mr. Langley, 56, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Langley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Virginia.

John M. Lyon

Mr. Lyon, 60, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lyon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Dakota.

Douglas S. Morical

Mr. Morical, 36, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morical meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

Robert L. O'Neill

Mr. O'Neill, 57, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. O'Neill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Barry S. Neukum

Mr. Neukum, 36, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neukum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maryland.

Mark E. Peters

Mr. Peters, 32, has had ITDM since 1989. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peters meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Brian M. Rossiter

Mr. Rossiter, 25, has had ITDM since 1997. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rossiter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Roger M. Russell

Mr. Russell, 54, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

John G. Schaible, Jr.

Mr. Schaible, 47, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schaible meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Rory J. Seleman

Mr. Seleman, 37, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes

management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seleman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

Thomas P. Shergold

Mr. Shergold, 52, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shergold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Kristopher R. Soto

Mr. Soto, 25, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Soto meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Frank L. Tomlinson

Mr. Tomlinson, 57, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tomlinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Eric D. Travland

Mr. Travland, 37, has had ITDM since 1995. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Travland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Ralph E. Vindittie

Mr. Vindittie, 53, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vindittie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

James E. Waller, III

Mr. Waller, 38, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Chase M. Wells

Mr. Wells, 37, has had ITDM since 1989. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wells meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Laurie E. White

Ms. White, 45, has had ITDM since 2007. Her endocrinologist examined her in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2008 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from New York.

Robert E. Williams

Mr. Williams, 59, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Craig E. Wolf

Mr. Wolf, 52, has had ITDM since 2001. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has

stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wolf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Stephanie D. Wright

Ms. Wright, 39, has had ITDM since 2008. Her endocrinologist examined her in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Wright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2008 and certified that she does not have diabetic retinopathy. She holds a Class B operator's license from North Carolina.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003, Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: September 3, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20893 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7165; FMCSA–04–17984; FMCSA–05–23238; FMCSA–06–24783]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 15, 2008. Comments must be received on or before October 9, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–00–7165; FMCSA–04–17984; FMCSA–05–23238; FMCSA–06–24783, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 13 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert L. Aurandt
Donald Bostic, Jr.
Harry R. Brewer
Clarence N. Florey, Jr.
Joseph H. Fowler
Donald R. Hiltz
Kelly R. Konesky
Gregory T. Lingard
Hollis J. Martin
Kevin C. Palmer
Charles O. Rhodes
Gordon G. Roth
Daniel A. Sohn

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 33406; 65 FR 57234; 67 FR 57266; 69 FR 52741; 71 FR 53489; 69 FR 33997; 69 FR 61292; 71 FR 55820; 71 FR 5105; 71 FR 19600; 71 FR 32183; 71 FR 41310). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 9, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 13 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 3, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20891 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for temporary waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Alaska Railroad Corporation

[Waiver Petition Docket Number FRA–2006–26029]

In September 2006, the Alaska Railroad Corporation (ARRC) submitted a temporary waiver petition to support field testing of its processor-based train control system, identified as Collision Avoidance System (CAS), pursuant to 49 CFR 211.7 and 211.51. The regulatory relief sought by ARRC was for development testing and demonstration purposes only. This waiver request was conditionally approved by FRA on February 22, 2007. All information submitted in conjunction with ARRC's previous waiver petition can be found in Docket Number FRA–2006–26029.

ARRC has now submitted a new waiver petition requesting modification to the previously approved regulatory relief. In the petition, ARRC specifically seeks relief from the following regulations:

1. Regulatory relief from 49 CFR 236.514 (Interconnection of cab signal system with roadway signal system); and

2. Modification to the previously approved regulatory relief from 49 CFR 236.11 (Adjustment, repair, or replacement of component) to specifically exempt the wayside interface that was installed to support CAS.

Interested parties are invited to provide written views, data, or comments pertinent to FRA's consideration of the ARRC's request for waiver of compliance. All communications concerning this petition should identify the appropriate docket number (Docket Number FRA–2006–26029) and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA prior to final action being taken. Comments received after this period will be considered to the extent practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the DOT Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, in Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on September 3, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–20855 Filed 9–8–08; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Tuesday,
September 9, 2008

Part II

Election Assistance Commission

Publication of State Plan Pursuant to the Help America Vote Act; Notice

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by Connecticut, Montana, Oklahoma, and South Dakota.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254 (a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is Connecticut's first revision, Montana's second revision, Oklahoma's second revision, and South Dakota's third revision to its State plan.

The revised State plans from Connecticut, Montana, Oklahoma, and South Dakota address changes in the respective budgets of the previously submitted State plans. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these changes to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from September 9, 2008, the States are eligible to implement the changes addressed in the plans that are published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Officials

The Honorable Susan Bysiewicz, Secretary of State, State Capitol, 210 Capitol Avenue, Suite 104, Hartford, Connecticut 06106, Phone: (860) 509–6200, Fax: (860) 509–6209.

The Honorable Brad Johnson, Secretary of State, P.O. Box 202801, Helena, Montana 59620–2801, Phone: (406) 444–2034, Fax: (406) 444–3976.

Mr. Michael Clingman, Secretary, Oklahoma State Election Board, Room B–6, State Capitol Building, P.O. Box 53156, Oklahoma City, Oklahoma 73152, Phone: (405) 521–2391, Fax: (405) 521–6457.

The Honorable Chris Nelson, Secretary of State, State Capitol, Suite 204, 500 East Capitol Avenue, Pierre, South Dakota 57501–5070, Phone: (605) 773–3537, Fax: (605) 773–6580, e-mail: *sdsos@state.sd.us.*

Thank you for your interest in improving the voting process in America.

Dated: August 25, 2008.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

2003 Montana HAVA Plan Amendments - 2008

HELP AMERICA VOTE ACT OF 2002 (HAVA)

July 25, 2008

MONTANA SECRETARY OF STATE
BRAD JOHNSON

Introduction

Section 12 of the Help America Vote Act (HAVA) of 2002 describes the material changes required to the State Plan filed in 2003, as required by Section 254(a)(12). Specifically Section 12 describes the progress that the State of Montana has made with regard to the State Plan and Amended State Plan filed with the U. S. Federal Elections Commission.

Amended State Plan Requirement

Section 12 In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The following information is amendments to the 2003 State Plan and 2005 Amendments categorized by the specific HAVA requirement.

(1) How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Voting System Standards		
HAVA Requirement	State of Montana's Current Status	Planned Action
Allow voter to change or correct any error on the ballot before casting the vote.	Meets the requirement. All Montana polling places allow replacement ballots to be issued for voters to change or correct any error on the ballot before casting the vote.	Continue state and county voter education campaign addressing proper ways to fill in ovals and the effects of overvotes and undervotes.
	All Montana counties allow replacement ballots to be issued for changes or corrections to absentee ballots before casting the vote.	Instructions will continue to be printed on the ballot about changing and correcting mail-in absentee ballots.
Prevent or alert voter if overvotes are detected on the ballot.	Meets the requirement. Voter assistance terminals that prevent or alert voters about overvotes detected are available at every Montana polling place and optical-scan tabulators are available at select polling places.	Continue state and county voter education campaign addressing the effects of casting an overvote.
	Mail-in absentee ballot instructions have been updated to include ballot correcting instructions.	Continue state and county voter education campaign addressing the effects of casting an overvote.

HAVA Requirement	State of Montana's Current Status	Planned Action
All voting systems must be able to produce a paper audit trail of all votes cast.	Meets the Requirement. MCA 13-17-103 (1)(k) Required specifications for voting systems.	No action needed.
Voting systems must be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in the manner that provides the same opportunity for privacy and independence as other voters. The requirement may be met by having at lease one DRE or other system equipped for individuals with disabilities at each polling site.	Meets the Requirement. Every Montana polling place is equipped with at least one voter assistance terminal to assist voters with disabilities, primarily the blind and visually impaired.	No action needed.
A uniform definition of what constitutes a vote for each voting system in use in the state.	Meets the Requirement MCA 13-15-206 Counting votes – uniformity – rulemaking – definitions.	No action needed.

Provisional Voting and Voting Information Requirements		
HAVA Requirement	State of Montana's Current Status	Planned Action
A provisional voter is to be allowed to vote a paper ballot or an electronic ballot upon the completion of an affidavit. The ballot will be sealed in an envelope or electronically stored separately from the regular votes. The provisional ballot is to be transported to the county board of elections for determination of eligibility and possible counting if the voter is deemed eligible.	Meets the requirement. MCA 13-13-601 Provisional voting in person. MCA 13-13-602 Fail-safe and provisional voting by mail. MCA 13-15-107 Handling and counting provisional and challenged ballots.	No action needed.
Each voter who casts a provisional vote shall be given written information on how they can ascertain whether their vote was counted, and if not, why.	Meets the requirement. 13-13-601(1)(a) Provisional voting in person. A voter is given required information before being given a ballot and is notified.	No action needed.

HAVA Requirement	State of Montana's Current Status	Planned Action
Establish a free access system, such as toll-free phone number or internet website, allowing provisional voters to ascertain whether their vote was counted, and if not, why.	Meets the requirement. MCA 13-15-107(4) Handling and counting provisional and challenged ballots. Provisional voters may call the toll-free Voter Information Hotline or contact their county election office to verify whether their vote was counted, additionally each county office must notify the elector of their vote was counted, and it not, why.	No action needed.
Post information regarding the day of the election and polling hours.	Meets the requirement. MCA 13-13-112 Display of instructions for electors.	Continue distributing uniform information posters for every county polling place.
Post instructions on how to vote including how to cast a provisional vote.	Meets the requirement. MCA 13-13-112 Display of instructions for electors.	Continue distributing uniform information posters for every county polling place.
Post general information on state and federal voting rights and the right to a provisional vote if they meet the requirements to vote.	Meets the requirement. MCA 13-13-112 Display of instructions for electors.	Continue distributing uniform information posters for every county polling place.
Post general information on federal and state laws prohibiting acts of fraud and misrepresentation.	Meets the requirement. MCA 13-13-113 Warning notice to be posted. MCA 13-37-131 Misrepresentation of voting record -- political civil libel.	Continue distributing uniform information posters for every county polling place.
Any voter who casts a vote as the result of a federal or state court order extending polling hours, shall do so on a provisional ballot, and it shall be kept separate from other provisional ballots.	Meets the requirement. 13-15-107 Handling and counting provisional and challenged ballots.	No action needed.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of -

A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

B) The methods to be used by the state to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

Consistent with the 2003 State Plan, the secretary of state manages the distribution of HAVA funding to the 56 county election offices established in Montana law. The state remains responsible for accounting of all expenditures, funding levels, program controls, and outcomes of HAVA funds in accordance with federal law.

HAVA funds are distributed based on availability and priority described in the Preliminary State Plan. The secretary of state measures county performance through extensive reports, surveys, and audits. The secretary of state also ensures performance goals set in Section 8 are met by directly purchasing approved materials, reimbursing counties for approved expenditures, and providing grants to counties for specific uses. In summary, the state will expend the funds at the state level with little cost, if any, to the counties.

Requirements payment used to purchase and upgrade Montana's voting systems:

Action	Amount
Replace punch card voting systems in six counties	$360,000
Purchase , one per polling place, voting systems accessible for individuals with disabilities including the blind and visually impaired	$3,150,000
Match half of the optical scan hardware costs for counties choosing to purchase voting systems that meet the HAVA overvote notification requirement	$932,500

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Voter Education

The secretary of state actively pursues the voter education efforts detailed in the 2003 State Plan. Television, radio, and newsprint reach the largest audience and are utilized preceding federal elections to inform voters about the provisions of HAVA. Voter Information Pamphlets that include HAVA information are mailed to every voting household in Montana before federal general elections. Community based education efforts such as booths at county fairs, outdoors shows, and home shows provide voters with the chance to learn about HAVA provisions and Montana's voting systems. Voter education among Montana's youth is encouraged and supported by the Secretary of State. Youth vote activities include visiting school, encouraging college students poll worker recruitment, and supporting mock elections within Montana's schools.

Voter education expenditures summary:

Mechanism	Expenditures to date	Funding Source
Television, radio, newsprint, Internet	$597,822	HAVA
	$526,093	Secretary of State
Production and distribution of the Voter Information Pamphlet	$0	HAVA
	100%	Secretary of State
Education and Training	$1,551,983	HAVA
	$30,065	Secretary of State

Election Administrator education and training

Bi-annual workshops provide Montana's county election administrators with training on numerous topics including accessibility, voting systems, federal and state election laws. Agendas also cover timely election issues. Starting in 2007 the Secretary of State visited every county in Montana to improve communication between the state and county election offices on HAVA funding issues. The listening tour provided each county election administrator, county commissioners, staff and other interested parties with a one-on-one with the Secretary of State and staff to discuss election concerns and the direction of Montana's elections. The Montana Election and Technology Advisory Council, commissioned by the Secretary of State, gathers regionally appointed county election administrators to provide advice to the secretary of state and assist counties with help regarding election and statewide voter database matters.

Poll worker training

The secretary of state is continually improving the quality of poll worker training in Montana. In addition to providing the election judge handbook, the secretary of state provided in-depth in-person poll worker training to counties requesting training assistance. In addition to one-on-one training, the secretary of state has made poll worker training, recruitment, and retention a main election administrator workshop and regional training topic. The secretary of state also provides necessary information for college student poll worker recruitment. Instructional videos address the use of voting systems by persons with disabilities and the general public. In collaboration with the secretary of state's office, Disability Rights Montana conducts poll worker training for persons with disabilities and those assisting voters with disabilities.

2007 Election Administrator Workshop presentations and training topics:

Voting system vendor presentation	Commissioner of Political Practices presentation
United States Postal Service presentation	Election law update and review
Statewide voter database training	Polling place accessibility presentation
Absentee voting presentation	HAVA audit timetable and update
Voter database security training	Late registration question and answer
Election administrator scenarios	Provisional ballot update and training
Ballot and voting system security	County canvass procedures
Election judge recruitment and retention	Election night boards

2008 Regional County Training materials and topics:

ES&S Model 650 training	Statewide petition training
ES&S Model 150 training	Polling place checklist
ES&S AutoMARK training	Election night boards
Voting system testing and security	County canvass procedures
ES&S Unity online training	Election judge recruitment and retention
Statewide voter database training	Provisional ballot procedures
Voter and late voter registration training	Absentee ballot process training

2008 Election Judge Training topics:

Election judge qualifications	Polling place accessibility
Conduct of an election judge	Security procedures
Types of election judges and duties	Voting system setup and operation
Provisional voting	Poll watchers and petition gathers
Elector Identification	Spoiled ballots
Curb-side voting	Electioneering
Poll book reconciliation	Closing the polls

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

Montana's voting systems are consistent with HAVA voting system requirements by using voter assistance terminals, optical scan precinct tabulators, and/or county conducting voter education campaigns. Section 1 describes how each voting system used in Montana meets HAVA requirements.

Montana has incorporated applicable HAVA voting system requirements in state certification testing and is adding applicable voluntary voting system guidelines approved by the Elections Assistance Commission to current procedures, guidelines, and processes as necessary. Through the secretary of state's rule making authority granted in 2003 legislation, language has been adopted on what constitutes a vote and whether a vote is counted.

Summary of Montana Voting Systems in Use (2008 Figures)

Election Day Voting Systems	All 56 counties provide Elections Systems & Software AutoMARK voter assistance terminals 19 counties have Elections System & Software Model 650 optical scan central count tabulators 29 counties have Elections System & Software Model 100 optical scan tabulators 4 counties have Elections System & Software Model 150 optical scan tabulators 2 counties have Elections System & Software Optech IV-C 200 Eagle and Eagle Optech III-PE optical scan tabulators
Absentee Voting Systems	44 counties have optical scan tabulation equipment Absentees are counted on Election Day
	56 counties provide voter assistance terminals Absentees are counted on Election Day

(5) How the State will establish a fund described in subsection (b) (Elections Fund) for purposes of administering the State's activities under this part, including information on fund management.

House Bill 548, passed by the 2003 Montana Legislature and signed into law by the Governor creates a special federal revenue account to the credit of the secretary of state. The secretary of state shall be the single signing authority for administration of these funds, in compliance with HAVA. There is no appropriation identified with this legislation. It simply creates a mechanism to receive money. Funds will be spent in accordance with state and federal law.

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on

(A) the costs of the activities required to be carried out to meet the requirements of Title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

Since the allocation of HAVA funds in June 2003, Montana has received $16,596,803 and has spent approximately $13,116,000 through May 2008 to meet HAVA requirements. These funds have generated just over $900,000 in interest bringing Montana's current fund balance to just under $3,500,000 at the beginning of May 2008. With Congress's decision to provide 2008 Requirements Payments, Montana will receive an additional $575,000 that is subject to HAVA match requirements. The federal 5% match requires state and county provide a match of approximately $600,000. Remaining HAVA funds, interest, and the 2008 Requirements Payment will be spent on meeting HAVA Title III requirements.

Summary of HAVA Funds: May 15, 2008

Federal Funds Received	$16,596,803
Federal Funds Spent	($14,046,261)
Interest Accrued	$918,691
Total Remaining Funds Plus Interest	**$3,469,233**

Voting System Standards

Montana currently meets voting system standards required in HAVA Section 301. The secretary of state will continue to pursue a statewide voter education campaign to inform voters about the effects of casting overvotes and about replacement ballots. The state plans to spend $600,000 of remaining HAVA funds to match half of the county precinct counter hardware costs and $75,000 of the 2008 Requirements Payment for voter education activities.

Provisional Voting and Voting Information Requirements

Voters in Montana may cast a provisional ballot, consistent with HAVA Section 302 requirements, and check if the ballot was counted or not. The secretary of state prints and distributes Voter Information and Warning posters to each county for polling place posting and display. Provisional and voter information poster expenses are approximately $10,000 and are provided by state funds.

Computerized Statewide Voter Registration Requirements

The Montana statewide voter registration database meets HAVA section 303 requirements. The secretary of state expects $1,154,000 of existing HAVA funds will be allocated for the ongoing management and maintenance of the registration database. Voter registration requirements meet HAVA section 303 standards as allowed in the HAVA Section 304 minimum requirement language.

Summary of Title III activities, costs, and 2008 Requirements Payment:

Title III Activities	Expected Expenses	2008 Requirements Payment Allocation
Voting System and Security	$688,000	$75,000
Provisional Voting and Information	$122,000	$0
Statewide Voter Database and Misc.	$1,154,000	$500,000
Voters Who Register By Mail	$0	$0
TOTAL	**$1,964,000**	**$575,000**

In addition to fulfilling HAVA Title III requirements, the secretary of state provides $280,000 HAVA funds for counties to implement additional security measures, $112,000 for hiring provisional ballot judges, and $208,000 to conduct preventative maintenance on accessible voting systems. Counties must submit a narrative and/or proper documentation indicating intended or full performance of funding requirements.

The secretary of state will continue to provide polling place accessibility improvement grants and HAVA compliant precinct counter grants to counties. The secretary of state estimates $715,000 in polling place accessibility grants and $600,000 in precinct counter grants, in addition to the 2008 requirements payment, will be required to fund future applications. Previous polling place expenditures are listed below.

Polling place accessibility grants by calendar year:

2003	$0.00
2004	$138,356
2005	$16,982
2006	$494,698
2007	$111,756
2008 (May)	$77,633
Total	**$839,425**
On-going accessibility	$715,000

Administrative, electronic voter database, election training, and voter education campaign expenses have partially been paid for with state sources since the implementation of HAVA. The secretary of state plans to continue absorbing these costs in state and county budgets as HAVA funding begins to taper off. New and ongoing activities along with anticipated cost are listed below.

Summary of Montana's budget for ongoing activities

Proposed State Budget	Expected Expenses	2008 Requirements Payment Allocation
Polling Place Accessibility	$715,000	
Provisional Balloting	$112,000	
Voter Education, Election Official, and Poll Worker Training	$600,000	
Statewide Voter Database and Misc.	$1,154,000	$500,000
Voting Systems and Security	$688,000	$75,000
Administration	$200,000	
TOTAL	**$3,469,000**	**$575,000**

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Consistent with EAC Maintenance of Effort Funding Advisories, the secretary of state has maintained expenditure levels set by state fiscal year ending prior to November 2000. State election expenditures remain consistent at just over $350,000. County governments have seen the largest elections expenditure growth since 2000. In 2000, it is projected that counties alone spent just under $1,000,000 for the entire election year and are now averaging nearly $1.5 million for each election during the 2006. A summary of the state and county expenditures are listed below.

State and county election costs by year

Entity	Year	Expenditure
Secretary of State	2000	*$300,000*
	2001	*$240,000*
	2002	*$280,000*
	2003	$330,000
	2004	$343,919
	2005	$379,376
	2006	$303,940
	2007	$1,131,391 (voting systems)
	2008 (5/6th of year)	$342,947
County Governments	2000	*$800,000*
	2002	$884,099
	2004	$1,527,110
	2006	$1,494,135 – Primary $1,623,591 – General

*Estimates are in *Italics*

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Performance Goals

Montana's primary goal is to achieve compliance with HAVA through successful implementation of the programs outlined in the State Plan and Amendments. Following is an updated description of the timetable for meeting each goal of the 2003 State Plan and the title of the official responsible for ensuring such goal is met.

Summary of the updated performance goals and measures:

Goal	Official Responsible	Updated Timetable
Develop State Plan	Secretary of State	Completed – June 2004
Administrative Complaint Procedure	Secretary of State	Completed – January 2004
Elimination of punch card voting systems	Secretary of State County Election Administrators	Purchased – February 2004
Accessible Voting Systems	Secretary of State County Election Administrators	Purchased – May 2006 (extension granted)
Centralized Statewide Voter Management System	Secretary of State	Installed – November 2004
Provisional Ballots	Secretary of State County Election Administrators	Provided – January 2004
Voter Education, Election Official and Poll Worker Training	Secretary of State County Election Administrators	Ongoing
Poling Place Accessibility	County Election Administrators	Ongoing
Voting System Security and Standards	Secretary of State County Election Administrators	Ongoing

Performance Measurers

The secretary of state, Election and Technology Advisory Council, and county election administrators will work closely together to review efficiency and integrity of the Montana election process.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

Utilizing the rule making authority bestowed in the secretary of state, HAVA administrative complaint procedures have been placed in Administrative Rules (ARM 44.3.2601). The Montana Administrative Complaint Procedure provides a uniform nondiscriminatory process for the resolution of complaints alleging a violation of any provision of HAVA. Any person who believes a violation has occurred, is occurring, or is about to occur during a federal election may file a complaint with the secretary of state. The complaint must be on the prescribed form, signed, sworn, and notarized. HAVA allows for alternative dispute resolution if a timely decision is not made.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

The State of Montana received $5,000,000 in Title I funds. Section 101 funds have been used for the following items: prepare/implement the State Plan, replace punch card voting systems, statewide voter education campaigns, polling place accessibility grants, and election official training. $2,326,539 Title 1 funds have been spent, including interest $3,109,993 remains to be spent on new and ongoing activities. New activities include security grants and providing provisional ballot judges to counties.

(11) How the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless the change

(A) is developed and published in the Federal Register in accordance with Section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with Section 256 in the same manner as the State Plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The secretary of state will monitor the ongoing activities set in the State Plan. If the secretary of state determines the State Plan requires material change, the secretary of state will prepare recommended changes, meet the HAVA public notice and comment period, and publish changes to the State Plan in the Federal Register upon submitting the revised plan to the U.S. Election Assistance Commission.

(12) In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

Each section has been updated accordingly and reflects changes to the 2003 State Plan and as amended in 2005. The Montana Secretary of State will submit the amendments to the State Plan for publication in the Federal Register.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

No changes have been made to the committed appointed to develop the Preliminary State Plan. A list of the members of the Montana Election Reform Advisory Committee is in the 2003 State Plan.

State of Oklahoma Plan
for Implementation of the
Help America Vote Act of 2002

2008 Report on Progress of HAVA Implementation

SEC. 254. STATE PLAN. (42 USC 15404)

(a) IN GENERAL.—The State plan shall contain a description of each of the following:

(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

Implementation of provisional voting. [Sec. 302(a)]

Provisional voting was implemented for federal elections in 2004, and expanded by state law to all elections conducted by the County Election Boards on July 1, 2005.

Implementation of voter identification requirements. [Sec. 303(b)(2)]

Voter identification requirements set forth in HAVA were implemented for federal elections in 2004. State law echoes the HAVA requirements, stating that identification is required only for first time voters in federal elections. Bills have been introduced in the Oklahoma Legislature every year since 2005 that would require voter identification for all voters, but none of these bills have yet made it to the Governor's desk.

Coordination of state databases. [Sec. 303(a)]

Since January, 2006, the State Election Board has been sending voter registration data to the Oklahoma Department of Public Safety (DPS) each month to be matched against driver license records. We transmit all new records that have been submitted by mail and that have been entered in the system since the last transmission.

All records for which there is no match with DPS records and that have the last four digits of the Social Security number are submitted to the Social Security Administration for additional matching.

Upgrades for state voter registration database. [Sec. 303(a)]

The state voter registration database, a key component of the Oklahoma Election Management System, was upgraded in 2006 to meet fully the HAVA requirements. Currently there are two voter registration database applications in use. The Modern Election Support Application (MESA), which is used only by the State Election Board staff, and the Voter Registration Inquiry System (VRIS), which is available to all 77 County Election Boards on the internet. The full state voter registration database is available on a State Election Board website that requires County Election Board users to register usernames and passwords in order to gain access.

As part of the implementation of VRIS, the State Election Board assisted County Election Boards in the acquisition of computers and internet access. A total of $850,000 was allocated to reimburse counties for the purchase of computer hardware and software, for internet access and e-mail service, and for the installation and/or maintenance of computer hardware and software.

Polling place technology enhancements. [Sec. 301]

The Inspire Vote-by-Phone system was used in federal elections in 2006 and will be used again in 2008 to meet the disability access requirements of HAVA.

Design and/or evaluation of new voting device system.

State Election Board staff members continue to examine and evaluate the offerings of several voting system vendors, but to date none have produced the system we want. Oklahoma is committed to optical scan technology and hopes for a new optical scan device that would also accommodate disability access requirements in a single piece of equipment. Several vendors are working toward that goal, and we expect to purchase a system in 2009.

Support for newly created federal agencies.

No changes have been made in this area.

Improved process for uniformed services and overseas voters. [Title VII and UOCAVA]

No changes have been made in existing services for uniformed and overseas voters since 2005.

Improved process for disabled voters. [Sec. 301(a)(3)]

As noted above, the telephone voting system was used for federal elections in 2006 and will be used again in 2008. We intend to have a new optical scan voting device system which will accommodate the disability access requirements of HAVA in place by the state Primary Election in July, 2010.

New funds available in FY2008 will be applied to the purchase of the disability access component of the voting device system expected to be acquired in 2009 for implementation in 2010.

Improved process for language minority voters. [Sec. 301(a)(4)]

The telephone voting system includes Spanish-language audio ballots for the two counties currently covered by the minority language provisions of the Voting Rights Act. Printed Spanish-language ballots are also available in these counties.

Improvement in voter outreach programs.

No progress has been made in expanding the existing voter outreach efforts. We anticipate an extensive voter education program in connection with the implementation of new voting equipment in the 2010 elections.

Study of implementation of all-mail elections in Oklahoma.

No progress has been made toward launching a study of all-mail elections in Oklahoma.

Precinct Official training.

Precinct Official training is an ongoing enterprise for Oklahoma election officials. Precinct Official training for the 2008 election cycle began in November, 2007, and will continue as needed throughout the year. All counties conducted training for Precinct Officials who worked in the February 5, 2008, Presidential Preferential Primary Election prior to that election. Training for the 2008 election cycle included emphasis on provisional voting, voter identification, and the telephone voting system.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(A) Since July 1, 1989, the Secretary of the State Election Board has been the only official authorized by law (Title 26 O.S., Section 21-101) to purchase election equipment in Oklahoma. Therefore, the new funds available in FY2008 will be retained by the State Election Board to be spent on the new voting device system to be purchased in 2009 for implementation in elections in 2010. The new FY2008 funds will be applied to the purchase of the disability access component of the new system.

The new system, once purchased, will be allocated to the County Election Boards in a manner similar to the one in place since 1992, with at least one unit per precinct per county. Each county will have a small supply of extra devices and a few counties will likely house additional extra devices for distribution to other counties in case of emergency.

(B) The Secretary of the State Election Board will monitor the performance of the 77 County Election Boards and the performance of the new system by the same methods described in this section of the original State Plan (August 18, 2003).

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

A comprehensive program for voter education, for County Election Board official education and training, and for Precinct Official training will be developed by State Election Board staff in cooperation with the vendor of the new voting device system expected to be selected and purchased in 2009. No progress can be reported in this area until the new system is selected.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

The Secretary of the State Election Board is the only official in Oklahoma authorized by law (Title 26 O.S., Section 21-101) to purchase election equipment. The Secretary is committed to optical scan technology and is currently searching for a system that provides appropriate access to disabled voters as described in Section 201 of HAVA. The Secretary will only purchase a voting device system that complies with all requirements of HAVA and that has been tested and certified by the appropriate authorities. Further, the Secretary intends to purchase a system that has a proven record of accuracy and reliability in use in elections.

Following the expected selection and purchase of the voting device system in 2009, the Secretary will promulgate administrative rules as provided in the Oklahoma Administrative Procedures Act (Title 75 O.S., Section 250 et seq) to govern the use of the new system in all elections conducted by County Election Boards in Oklahoma.

(5) How the State will establish a fund described in sub-section (b) for purposes of administering the State's activities under this part, including information on fund management.

In 2003, two funds were created by law in the State Treasury. These funds, the "State Election Board Election System Revolving Fund" and the "State Election Board Help America Vote Act Revolving Fund" are used for the receipt and expenditure of HAVA funds, including the new FY2008 funds.

These two funds are subject to procedures of the Oklahoma State Treasurer's office and of the Office of State Finance. They also are subject to audit by the office of the State Auditor and Inspector. The funds are managed by the State Election Board personnel responsible for managing the agency's other financial resources.

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

Title I funds received: $5,000,000
Title I funds spent: $1,014,940.85 through December 31, 2007

2003 Provisional voting and voter identification

2004 Provisional voting and voter identification, Precinct Official training, payments to Provisional Voting Officers in polling places

2005 Software development for voter registration database upgrade and Precinct Official training

2006 Software development for voter registration database upgrade and Precinct Official training

2007 Maintenance and upgrade of voter registration database

Projected Title I expenditures in 2008: $260,000 (estimated)

2008 Development of software upgrade for voter registration processing functions

Title II funds (Section 251) received: $27,659,638
Title II funds (Section 251) spent: $2,522,702.16 through September 30, 2007

2/17/05 — 9/30/05 0

10/1/05 — 9/30/06 $1,574,588.25

IVS telephone voting system, reimbursements to counties for telephone equipment and service, and training; hardware for voter registration database upgrade; software for database upgrade; reimbursement to Oklahoma Department of Public Safety (DPS) for database coordination

10/1/06 — 9/30/07 $948,113.91

IVS telephone voting system, reimbursements to counties for telephone equipment and service, and training for telephone voting system; reimbursement to counties for computer hardware and software; website development for voter registration database upgrade; reimbursement to DPS for database coordination.

10/1/07 — 9/30/08 $1,437,288 (estimated)

IVS telephone voting system (annual maintenance fee plus three elections); hardware and software for voter registration processing system upgrade

10/1/08 — 9/30/09 $341,822 (estimated)

IVS telephone voting system (one election)

Title II funds (Section 261) received: $694,706
Title II funds (Section 261) spent: $265,441.15 through September 30, 2007

The State Election Board staff created a list of products that could be used to improve polling place accessibility. The list included such items as signs, portable ramps, portable mats, doorknob adaptors, accessible voting booths, accessories to make voting booths accessible, and other products that can be moved from one polling place to another as needed. Each County Election Board was provided with a budget based on the number of precincts in the county and was asked to order items from the list. Using the state competitive bid process,

the State Election Board purchased the requested items and provided them to the County Election Boards in time for the General Election in 2006. The State Election Board also purchased and distributed to each County Election Board a large quantity of signature guides. The State Election Board worked with the state Office of Disability Concerns and several disability organizations to produce a videotape concerning polling place accessibility and sensitivity to persons with a full range of disabilities. The video was distributed to all County Election Boards for use in Precinct Official training in 2006. Also, the State Election Board purchased buttons with the wheelchair logo and the words "Please ask me for assistance" for Precinct Officials to wear on election day. The State Election Board worked with the state Library for the Blind to have voter information materials recorded on audiotape cassettes and compact discs.

In 2007, the State Election Board contracted with the University of Oklahoma to develop an online training program on the use of the telephone voting system. The online training program contained modules for County Election Board staff and one for Precinct Officials.

Future expenditures of Title I and Title II (Section 251) funds

The State Election Board anticipates applying most of the remaining Title I and Title II (Section 251) funds for the purchase of the new voting device system and for further software upgrades in the areas of election accounting and election programming. After a voting device system is selected, a budget for its acquisition and implementation will be prepared. The State Election Board anticipates that the voting device system will be selected and purchased in 2009.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

No change.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

No change.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

No change.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

No change.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;
(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

No change.

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The original state plan and the previously published updates were reviewed by State Election Board staff and this document was developed to identify areas in which specific tasks have been completed or in which progress has occurred, and those in which no action has yet been taken. This state plan update includes details of funds received and funds spent (see item 6).

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The development of the State Plan was described in this section of the original plan (August 18, 2003). This document represents only a review of and progress report on the plan and contains no changes to the original plan. The State Plan Advisory Committee has not met since the prior review and progress report was made in 2005.

Since the last State Plan update was published in 2005, a new Secretary has been appointed in Tulsa County. Patricia Brown Bryant is now the Secretary of the Tulsa County Election Board and will sit on the State Plan Advisory Committee in the event it is reconvened.

Also former State Representative Opio Toure, a member of the original State Plan Advisory Committee, died early in 2008. The vacancy left by his death will be filled if and when it becomes necessary for the Advisory Committee to reconvene.

The Local Election Professionals Working Committee has not met since October 24, 2005. One member of this committee, Jason Rousselot left the Wagoner County Election Board at the conclusion of his term on April 30, 2007. His position on the committee has not been filled.

HAVA State Plan for South Dakota
As required by Public Law 107-252 Section 253(b)
Help America Vote Act of 2002

Chris Nelson
Secretary of State
State Capitol, Suite 204
500 East Capitol
Pierre, SD 57501-5070

Updated February 1, 2008

In October of 2002, the 107th Congress passed and President George W. Bush signed into law the Help America Vote Act of 2002. HAVA was designed to strengthen the integrity of elections in America. HAVA created many new requirements of states and counties regarding federal elections -- including mandates for voter registration, provisional voting, accessible voting, and voter education. HAVA also created a new federal agency, the Election Assistance Commission (EAC), to guide the management of federal elections and administer grants to states for fulfilling the requirements of HAVA's title III.

HAVA requires each state to describe its use of title II section 251 payments from the federal government by writing a "State plan." A 17-member HAVA task force developed South Dakota's first state plan in the spring of 2003. The state plan was updated in December of 2004 as HAVA projects matured. Federal elections in 2006 demonstrated the completion of all phases of the state plan.

In March of 2007 the Secretary of State certified to the EAC that South Dakota had fulfilled all of title III's requirements. The State also notified the EAC that it intended to expand its use of title II section 251 funds for other improvements to the administration of federal elections as allowed by HAVA §251(b)(2). The EAC notified the State that it must also revise its state plan to describe such use. The state plan was therefore revised in 2007 in a third version.

The Omnibus Appropriations Act of 2008 provided $575,000 for the State of South Dakota in keeping with the requirements of the original HAVA section 251 payment made to South Dakota in 2005. South Dakota's HAVA state plan is here revised in a fourth version to reflect the State's plan to use the $575,000 payment.

The 13 required points of HAVA §254(a):

(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections.

(1.1) Programs to educate, provide required information, eliminate overvotes, and provide replacement ballots

Two posters in 48-point font posted in each polling place and instructions posted in each voting booth inform voters when to vote, how to vote, how not to overvote, how to obtain a replacement ballot, how to obtain assistance, the right to a provisional ballot, how to contact an election official if rights are violated, and how to avoid election crimes. Facsimile ballots are available in county auditor offices prior to elections, posted at each polling place, and published in newspapers. Instructions are printed on all official ballots. AutoMARK ballot marking devices do not mark overvotes. In 2006 the State published full-page newspaper advertisements describing the AutoMARK. The State educates voters through its website at www.sdsos.gov and provides booklets entitled "General Information on South Dakota Elections." In 2004, the Secretary of State prepared a booklet describing election procedure changes, which was also provided in accessible formats including 18-point font, Braille, and audio. The Secretary of State prepares a ballot question pamphlet, also made available in alternate formats. In 2008, the State provided a voter information portal (VIP) through its website tied to the statewide voter database. VIP includes a polling place locator and sample ballot generated specific to each registered voter.

(1.2) Accessible voting device in each polling place

South Dakota counties currently provide the AutoMARK ballot assistant in every polling place for any federal election. The AutoMARK is available for any voter. It assists a broad range of voters in accessing and marking ballots independently and privately. Counties may select other accessible voting devices approved by the State Board of Elections.

(1.3) Provisional voting

South Dakota Senate Bill 13 became law on July 1, 2003, providing for provisional voting. The processing and counting of provisional ballots is described in SDCL 12-20-5.1 and 12-20-13.1 through 13.4.

(1.4) Computerized statewide voter registration list

Beginning in January of 2004, the State has maintained an electronic statewide voter database of every registered voter updated daily. The statewide file links to the state Unified Judicial System for updates on convicted felons and links to the state Department of Health for updates on deceased persons. Each new voter registration is verified by driver license number or last four digits of social security number. Although the statewide file incorporates many processes to remove duplicate or ineligible registrations, the statewide file relies on local county knowledge for verification. The State continues to seek methods to improve the reliability of the list, including cooperative cross checks with other states.

(1.5) Voter registration cards

The South Dakota voter registration form, prescribed in administrative rule as adopted by the State Board of Elections, has been amended to include the HAVA-required language and check boxes, including: "Are you a citizen of the United States? Will you be 18 years of age on or before Election Day? If you checked 'no' in response to either of these questions, do not complete this form."

(1.6) Other activities to improve the administration of federal elections

The State has developed a computerized link between driver license offices and county auditor offices to transmit voter registration data. A voter is able to obtain a driver license and register to vote using one form. An electronic voter registration card is generated complete with digital signature image and sent to the county for validation and then sent to the State.

The State is currently developing project ST25, which will make improvements to election night reporting, canvassing, and voter education and access.

The State may use title II section 251 funds for additional projects to improve federal elections as determined by the Secretary of State. Counties may use title II funds for specific projects to improve federal elections with the approval of the Secretary of State.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

County auditors administer federal elections in South Dakota counties. In order to receive the original title II section 251 grant in 2005, South Dakota was required to contribute 5% toward a total amount including the federal grant of $11,596,803. The State and counties cooperatively met the match requirement. The state legislature appropriated $198,405.80, which was spent on the statewide electronic voter file. Each county established a reserved account determined by the county's portion of all statewide registered voters. The match contributions from the 66 counties totaled $411,952.20. The amount of federal grant funds reserved by the State for the counties was based on the portion of the total 5% match that the counties contributed. This total was reduced by the cost of the HAVA-required voting system, purchased from Election Systems and Software in December of 2005. The remaining title II

amount of $3,235,652.80 was reserved in the state election fund, designated to each county based on its match contribution. The Secretary of State monitors and tracks county expenditures of title II funds for ongoing title III-acceptable expenses via reports sent to the State. Additional documentation is systematically requested to ensure the acceptability of funds use. Counties are required to expend county-held accounts on title III requirements before requesting state-held funds. Counties are reimbursed semi-annually from the state election fund. Any title II amount in the state election fund not reserved, may be used for title III requirements or for improving the administration of federal elections. The state may determine to increase the amount of the election fund reserved for individual counties.

On January 1, 2008, the State credited $4,000 from the state election fund to each county's state-held balance, a total of $264,000. Such funds remain in the state election fund, in the state treasury, but are now reserved for county use in keeping with the existing model that requires counties to report to the state for funds use.

Given the State's experience with monitoring the costs to counties to provide title III requirements in federal elections in 2006, the State has observed that some expenses are consistent for each county, regardless of each county's number of registered voters. Based on that fact and a review of each county's current reserved state-held title II fund balance, the State has determined that the most appropriate method of distributing the $575,000 grant is to provide each of South Dakota's 66 counties with an equal share of such grant. Each county will be required to reserve in a county-held account, $458.53, the sixty-sixth part of the total match requirement of $30,263. The state will credit each county's state-held balance with $8,712.12. Once the $575,000 is received by the State, each county will be required to expend its $458.53 on title III requirements and report that to the State before accessing its state-held county-reserved funds.

If further title II section 251 funds are made available to the State, the Secretary of State will determine an appropriate method for funds distribution.

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

In addition to the ongoing programs described above in (1.1), the State made special efforts to educate the public on the new voting system used for the first time in 2006. The State and counties demonstrated the AutoMARK to voters throughout the State through a variety of venues. Additional efforts may be made in future years. County auditors are trained by the State on HAVA procedures at election workshops and conventions and through publications and e-mails. Advocates for persons with disabilities assist the State in training. Special regional trainings were given in 2006 for the new voting system. County auditors in turn train precinct officials at county election schools. In 2006, the Secretary of State also gave special trainings to precinct workers at regional sessions explaining the new voting system and proper

procedures for meeting the needs of voters with disabilities. Similar trainings may be given in future years.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

The HAVA task force guided the State on the voting system that would be selected. South Dakota laws and administrative rules have been passed to provide for all section 301 requirements. The Secretary of State and county auditors manage the processes needed to comply with section 301.

(5) How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

An election fund has been established in the South Dakota state treasury containing title II section 251 funds. Expenditures are made as needed by the Secretary of State with oversight by the State Auditor through spending authority granted by the State Legislature. Interest is earned and credited to the fund annually. All expenditures from the fund are subject to state government accounting and audit procedures.

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

In previous HAVA state plans the State described a budget for projected amounts to fund title III-required programs. All programs were fulfilled within that budget and significant funds remain available to the State and its counties for ongoing HAVA expenses, future voting system purchases, and other improvements to the administration of federal elections.

South Dakota received a title II section 251 payment in April of 2005 in the amount of $11,596,803. Through June 30, 2007:
$6,499,467.23 were total state-held title II funds remaining available, of which $2,877,600.00 were state-held, county-reserved title II funds remaining available.

As of June 30, 2007, counties reported that $33,791.36 remained in reserved county-held match money accounts.

The State expects that costs to the State to continue HAVA programs will likely be reduced for some time. As current programs mature and become a part of the regular

fabric of federal elections, time and effort to the HAVA task should diminish. In the near future, a dedicated state HAVA coordinator may no longer be needed. In the case of the electronic voter file, initial development costs were substantial. Annual costs have been reduced. However, costs will continue and may increase for maintenance, technical support, network connections, and specific design updates. At some future time, the State may need to develop a new computerized voter registration database system. When that might be and what that might cost are imprudent to predict. Potential amendments to HAVA of 2002 may also increase the cost of state compliance with enlarged federal requirements.

The State expects that costs to counties will continue and increase at least at the rate of inflation to prepare and implement individual federal elections within the framework of the current voting system. When new voting systems are required, counties will face significant additional costs in acquiring the new equipment. The State and counties will work to maintain the current voting system for as long as practicable.

Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this state plan. New programs to improve the administration of federal elections may develop that have not yet been contemplated. The State determines not to narrowly predict what those might be in hopes that this state plan may stand indefinitely without further revision. The State will continue to submit annual financial status and narrative reports to the EAC concerning HAVA grants as required.

With continued conservative management of the HAVA grant funds and the benefit of accumulating interest, the State may be able to indefinitely continue to meet HAVA obligations and continue to improve the administration of federal elections in South Dakota without needing further state resources or additional federal grants.

The estimate for the development of ST25 is $200,000; support costs will continue. For ST25, South Dakota may use either title I section 101 or title II section 251 funds. South Dakota may effect additional programs as determined useful by the State.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In previous HAVA state plans, the State described the expense to the State for the State Election Supervisor. However, in 2007 the EAC advised that maintenance of effort applies specifically to prior expenses that became title III requirements. HAVA's maintenance of effort requirement is designed to ensure that federal grant funds do not replace already occurring state or county expenses. With this new understanding, the State clarifies that it had no such spending prior to HAVA and, therefore, has no level of spending to maintain.

Some counties, however, did have expenses consistent with title III requirements prior to HAVA. The EAC has allowed that South Dakota counties will be responsible for maintenance of effort according to the county fiscal year 1999. Counties have been advised to determine if there existed any spending for title III-type activities in 1999. If any existed in the county, the county will be responsible for maintaining that level every year according to the first year that the county used any federal or county funds dedicated to HAVA title III requirements.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

South Dakota has fulfilled the goals described in earlier state plans – including reducing the percentage of overvotes, educating voters on how to avoid and correct ballot errors, providing at least one §301(a)(3)(B) voting device in every polling place for any federal election, providing provisional voting, posting required notices at polling places as described above in (1.1), removing every person convicted of a felony and sentenced to the adult state penitentiary system from the statewide voter registration list, verifying every new voter registration against either the person's driver license or last four digits of social security number, providing voter registration cards as described above in (1.5), and providing quicker, easier one-form voter registration and updating at driver licensing stations as described above in (1.6).

The Secretary of State and county auditors will continue to monitor these processes. South Dakota is in compliance with federal election law and will continue to meet HAVA requirements.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

South Dakota law was written, effective July 1, 2003, to comply with HAVA section 402. Initial complaints are resolved by the State Board of Elections using an existing administrative complaint process. The alternative dispute process involves judicial appointment of an arbitrator to resolve the complaint.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

South Dakota received a title I section 101 payment in the amount of $5,000,000 in April of 2003. Title I funds have been used for payments to counties for punchcard voting system buyouts; voter education; statewide voter registration system programming, hardware, and connection costs; training and materials for election

personnel; travel for election personnel; salary and expenses for a dedicated state HAVA coordinator; and state plan development. The State may continue to use title I funds on these programs and for other programs permitted by HAVA §101(b).

Through June 30, 2007:
Total title I section 101 funds remaining available were $4,652,191.59.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—
(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;
(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and
(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The Secretary of State and county auditors will administer this state plan at the direction of the Secretary of State and the State Board of Elections.

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The methods by which the State fulfilled its previous state plans have already been described in this plan. The State anticipates no major changes to its implementation of HAVA, except that title II section 251 funds may now be used for additional improvements to the administration of federal elections.

The State has also determined that providing voters with the option of an audio interpretation in the Lakota language integrated on the device equipped for individuals with disabilities provided pursuant to HAVA §301(a)(3)(B), an element of South Dakota's voting system, as was done on the AutoMARK ballot marking devices in 11 counties for the Primary and General elections in 2006, is impractical given the amount of effort necessary, the cost to the State and counties, and the extremely limited number of users. The State expects to continue to provide a Lakota translation of the ballot question pamphlet for the General Election to the American Indian radio stations. South Dakota counties required to do so by federal law will continue to provide translations of election announcements on Indian radio stations and continue to provide live interpreters at polling places to assist American Indian voters.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The state plans of 2003 and 2004 were developed with guidance from a HAVA task force comprised of advocates for persons with disabilities and voter participation, representatives of the recognized political parties, state legislators, county auditors including the county auditors of South Dakota's two most populous counties, the State Board of Elections, the State Election Director, and the Secretary of State.

Task force members and other stake holders were notified of the 2008 proposed plan and were offered the opportunity to comment. The proposed plan was available for inspection and comment by the public for 30 days. The plan was posted at www.sdsos.gov and was available by request. The State notified the public of the opportunity to also comment on the proposed plan at an open hearing, which was the meeting of the State Board of Elections held via Dakota Digital Network on July 17, 2008, where the plan and submitted comments were presented and discussed. The State has considered all comments. The State Board of Election has approved this state plan. This plan is now being sent to the Election Assistance Commission for publication in the Federal Register.

State of Connecticut

State Plan

As required by the Help America Vote Act

Public Law 107-252, Section 253(b)

March 11, 2008

Secretary of the State Susan Bysiewicz
State Capitol
210 Capitol Avenue
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Hartford, CT 06106

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INTRODUCTION

As the Chief Election Official for the State of Connecticut I am proud to present the 2008 Revised Connecticut State Plan. Development of a state plan is required by Section 253(b) of the Help America Vote Act of 2002, Public Law 107-252 (hereinafter "HAVA") to detail the implementation of the Act in Connecticut. HAVA is one of the most significant and influential election reform bills passed in recent years. I am proud to say that Connecticut stands at the forefront of states with regard to many of the provisions. With the appropriate amount of federal financial support, the State of Connecticut will have the opportunity to build upon our effective administration of elections when implementing the provisions of HAVA.

This State Plan, developed in conjunction with the Connecticut State Planning Committee, establishes a solid outline for compliance with the provisions of HAVA. The committee is comprised of a vast array of participants and stakeholders each representing an important aspect of our community.

Although each of our 169 municipalities remain responsible for the administration of our elections at the local level and any additional requirements prescribed by HAVA, the Office of the Secretary of the State will seek to provide them with the tools and financial support necessary to fulfill their expanded duties under HAVA.

The State of Connecticut will continue to provide accessibility for individuals with disabilities and continue to work toward the common goal of allowing all citizens in the state the opportunity to vote in private. We will work hard to remain at the very forefront of implementing a uniform statewide voter registration system and will continue to investigate all aspects of voting systems to identify which systems will most benefit all electors in our state.

Connecticut will continue to update and refine the State Plan as necessary to reflect changes and progress in election reform. I am confident that the State of Connecticut will become a model for other states as we work toward compliance with HAVA.

Susan Bysiewicz
Secretary of the State

STATE PLAN APPROACH

The State of Connecticut administers elections through a two-tiered system. The Secretary of the State is the Chief Election Official and through the Secretary's agency administers and supervises the electoral process at the state level. Each of the 169 towns in Connecticut have a town clerk who is either elected or appointed and two registrars of voters who are elected for two or four year terms. These officials work in cooperation to effectively administer successful elections at the local level. The Secretary of the State, as an advisor, the town clerks, and registrars of voters must work together to serve all political candidates and the nearly 2 million registered voters in Connecticut.

Status of State of Connecticut's HAVA implementation:

The State of Connecticut completed implementation of a centralized voter registration system in 2006 that allows 169 towns to access a central database of all registered voters in the State. The centralized voter registration system allows registrars of voters to effectively monitor their official registry list, keep track of those electors who may have moved in or out of their municipalities, and to more effectively prevent voter fraud and duplicate registration.

Connecticut used significant resources to meet all of the other HAVA requirements. To date, the State has completed the centralized voter registration system, redesigned key election administration processes, establish a provisional ballot system, revamped election official and voter training, and investigated several voting system alternatives. The State of Connecticut's ability to provide ongoing operations as well as maintenance of new and required capabilities is dependent on adequate resources and funding from the Federal level.

State of Connecticut's Future Approach:

This State Plan is organized as specified in HAVA §254. Each section of this document corresponds to a subsection of §254 and addresses a State Plan requirement specified in HAVA. The plan outlines HAVA requirements and the State's current status in regard to those requirements, and defines the actions planned to help the State meet those requirements.

STATE PLAN REQUIRED ELEMENTS

A. TITLE III REQUIREMENTS AND OTHER ACTIVITIES

How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections. (HAVA §254(a)(3)).

1) §301(a) Voting System Standards Requirements
Deadline for Compliance: January 1, 2006

In 2007, the State completed the transition from lever voting systems to optical scan voting systems. Currently, all 169 municipalities use optical scan voting systems as the primary voting method and supplement this system with the IVS vote-by-phone system to allow all voters the opportunity to vote in a private and independent manner. Before the enactment of HAVA, the State of Connecticut began investigating other voting technologies. In the 2003 legislative session, the Secretary of the State proposed legislation that would allow at least three municipalities to participate in a voting demonstration project using electronic voting technology. On April 29, 2003, Governor John Rowland signed Connecticut Public Act 03-7, An Act Concerning a Demonstration Project for the use of Electronic Equipment for the Casting and Counting of Ballots and Prohibiting the use of Punch-Card Voting Machines, that allowed the State of Connecticut to test electronic voting technologies in different municipalities. After the demonstration, a full report was issued to the legislative committee having cognizance over this matter detailing the successes and failures of the different voting technologies along with individual voter feedback. This report was useful as the State of Connecticut continued the process of moving toward electronic voting systems.

Each of Connecticut's 169 municipalities received two optical scan voting systems per polling place and one additional optical scan voting system to use town wide for central counting of absentee ballots, if necessary. In addition, each municipality was provided with a number of voting booths equal to one voting booth per two hundred fifty voters in town. This ratio has proven to be satisfactory to accommodate the number of voters that have used the new optical scan voting system in each election beginning in 2007. However, the State will continue to monitor this factor and adjust this requirement as necessary.

The State of Connecticut has expended significant funds and resources to train poll workers and election officials and to conduct voter outreach on the use of the new electronic voting equipment. Adequate federal funding was and continues to be vital to ensure the State of Connecticut's compliance with this provision of HAVA.

The ultimate goal of the Secretary of the State was to replace all lever voting systems within the State by 2006. However, with the rejection of the State of Connecticut's HAVA §102 application, which would have provided additional funds and authority to replace all lever voting systems in the State, this ultimate goal was delayed. However, as stated earlier, the State of Connecticut has now fully completed implementation of optical scan voting technology through the use of a "Phase-In" plan (described below) for replacement of lever voting systems.

Finally, §301(a) of HAVA requires states to define what constitutes a legal vote for each type of voting system used in the State. Connecticut already complies with this provision. For each voting system in current use, the Secretary of the State produces a manual defining what constitutes a legal vote in the case of a canvass or recanvass. The

State will continue to define a legal vote in a uniform manner for each voting system used in the State.

Implementation of Connecticut's Voting System Compliance has progressed as follows:

a) Planning - Connecticut conducted a demonstration project using electronic voting technology pursuant to Connecticut Public Act 03-7. Such demonstration project resulted in a full written report of the results of such project. The report was then used as a reference when Connecticut continued the final selection process of electronic voting equipment.
b) Implementation – The State of Connecticut placed two optical scan voting systems in each polling location in Connecticut. The State of Connecticut had 20 municipalities use optical scan voting systems in the 2006 general election. Even as these 20 municipalities used this equipment for the first time in 2006, the State continued to implement and deliver equipment to all municipalities in the State. Beginning in 2007, all municipalities in the State had replaced their lever voting machines with new optical scan voting technology. In November, 2007 each municipality used the optical scan voting technology in their municipal elections and in 2008 each municipality used the technology again for the Presidential Preference Primaries. Finally, beginning in 2006 each polling place in Connecticut used the IVS vote by phone system and shall continue to use such system in the future until a more accessible system is available.
c) Operating and Maintenance – Connecticut will continue to monitor the administration of the optical scan voting machines and redefine standards as they become necessary. In addition, Connecticut will continue to monitor the availability of accessible voting systems with intention of purchasing additional and more accessible equipment should it become available.

A more detailed explanation of Connecticut's compliance with Section 301, Voting System Standards, can be found in *Appendix A.*

2) §302, Provisional Voting and Voting Information Requirements
Deadline for Compliance: January 1, 2004

HAVA addresses the process of provisional voting to ensure that no individual who appears at the polls intending to cast a ballot is turned away without having the opportunity to do so. Currently, Connecticut General Statutes incorporate provisional ballot procedures.

In addition to provisional voting requirements, HAVA mandates that states publicly post specific information at the polls on Election Day. Connecticut currently displays all required postings in compliance with HAVA.

HAVA further provides that voters who vote (pursuant to a court or other order), during extended hours after the normal close of a polling place, cast provisional ballots. These ballots must be kept separate from other provisional ballots. As with other provisional ballot requirements, the State of Connecticut currently has this provision in state statute.

Implementation of Connecticut's Provisional Voting Procedures progressed as follows:

a) Impact Assessment - The Secretary of the State assessed the requirements of HAVA §302 and reviewed and compared existing State law with HAVA.
b) Implementing Revisions - The Secretary of the State developed revisions and additions to State law and facilitated passage of such laws in the State legislature. Once such legislation passed, the Secretary of the State placed the new law into operation with revised procedures, training, and outreach.

Details on the current status of provisional voting and Election Day postings can be found in *Appendix B.*

3) §303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail
Deadline for Compliance: January 1, 2004.

Currently, 169 of Connecticut's municipalities participate on the State of Connecticut's Centralized Voter Registration System ("CVRS"). Each user who participates on CVRS has access to the information stored on the mainframe through individual computers located within their offices. Persons desiring to register to vote either present their qualifications in person at the registrars of voters or Town Clerk's office or mail their application to such office. Once received, an applicant's qualifications are reviewed and the applicant is either accepted or rejected as a qualified elector. If accepted, the registrars of voters enter the applicant's registration information into CVRS at the local level where such entry automatically updates the central mainframe. CVRS is not only used for voter registration purposes but it is also used to create and print the official registry list used in all elections, primaries and referenda in the municipalities. The central database that houses all voter information is located at the State of Connecticut's Department of Information Technology on the same mainframe as the Connecticut State Police. This location was chosen because of the high security associated with such location and because the location is regularly audited by the Federal government for security purposes. Because of the central location, the Secretary of the State is able to review the database on a regular basis to identify potential duplicate voters and forward such findings to the local registrars of voters for additional review. Finally, the Secretary of the State has already established procedures with the Department of Corrections to identify those persons who have lost their voting privileges because of a felony conviction, the Department of Motor Vehicles and the Social Security Administration to satisfy the additional provisions of HAVA.

Implementation of Connecticut's Centralized Voter Registration System progressed as follows:

a) Planning - The Secretary of the State reviewed HAVA §303 to determine any additional requirements needed for CVRS and any necessary changes in procedures and/or state law. In addition, the Secretary of the State determined options for development of data integration between the Department of Motor Vehicles and the Social Security Administration
b) Implementing - The Secretary of the State implemented the necessary changes to procedures and state law necessary to comply with the provisions of HAVA. In addition, the Secretary of the State designed, tested and deployed any additions or upgrades to CVRS as required by HAVA and developed and delivered appropriate training and outreach to ensure successful implementation of CVRS to all municipalities.
c) Operating and Maintaining - The Secretary of the State will continually maintain and improve the software used in CVRS and maintain a technical infrastructure necessary for all users of CVRS in order to facilitate a greater administration of all federal elections.

Details on the current status of Connecticut's Centralized Voter Registration System and Identification Provisions can be found in *Appendix C.*

4) §304, Minimum Requirements

The State of Connecticut understands that the requirements outlined in Title III of HAVA are the minimum requirements required to be implemented by law and that the State may establish different election technology and administration requirements. Any different requirement that the State imposes will comply with all Title III requirements, as well as the laws described in HAVA §906.

5) §305, Methods of Implementation Left to Discretion of State

The State may choose various means to comply with the requirements of HAVA. Specific details on the implementation methodology chosen can be found in prior sections of this plan.

6) §311, Adoption of Voluntary Guidance by Commission

Once the federal Election Assistance Commission has issued its voluntary recommendation with respect to Title III, the State will consider that guidance in updating the State Plan. The State will incorporate those recommendations deemed appropriate into subsequent versions of the State Plan.

7) §312, Process for Adoption

The State will monitor the progress of the Election Assistance Commission on developing the Title III recommendations. If appropriate, the State will provide feedback on the new recommendations issued by the Election Assistance Commission during the public comment period.

8) HAVA §251(b)(2) – Other Activities

The State proposes to establish a solid foundation to build and sustain the people, processes, and technology necessary to maintain the new capabilities.

B. CONNECTICUT'S DISTRIBUTION OF REQUIREMENTS PAYMENT

How the State will distribute and monitor the distribution of the requirements payments to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8). (HAVA §254(a)(2)).

1) Eligibility of local units to receive the payment

The Secretary of the State will centrally manage initiatives funded by requirements payments. The Secretary of the State will be responsible to account for all expenditures, funding levels, program controls, and outcomes. The Secretary of the State will follow applicable Connecticut law regarding the expenditure of federal funds. The Secretary of the State will provide such support as is feasible and appropriate to the municipalities and other organizations within the State if they seek HAVA grants outside the scope of requirements payments.

2) Performance measures for local units

The Secretary of the State will centrally manage the funds as described in Subsection 1 of this Section and the Secretary of the State will monitor the initiatives for which those funds are authorized.

The Secretary of the State will monitor the performance of each initiative that is funded by requirements payments in three areas; financial controls, compliance with standards, and program results.

Financial Controls: The Secretary of the State will develop and use standard financial reporting, as outlined by state and federal law, for all initiatives funded by requirements payments.

Compliance with Standards: The Secretary of the State will develop and use standard program management reporting for all initiatives that are funded by requirements payments to ensure that any program funded by requirements payments comply with the provisions of HAVA.

Program Results: The Secretary of the State will develop key performance indicators for each expenditure of requirements payments. Specific performance goals and measures are detailed in Section "H" of this report.

C) VOTER EDUCATION, ELECTION OFFICIAL EDUCATION AND TRAINING, AND POLL WORKER TRAINING

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III. (HAVA §254(a)(3)).

Education and training programs are critical to a successful program of election reform in Connecticut. The proposed milestones in this document will require change management to ensure that all stakeholders (poll workers, election officials, voters, etc.) are comfortable with the new policies/laws and supporting technologies that HAVA requires.

Currently, training programs in the State are predominantly localized and, in some cases, informal. The Secretary of the State distributes policies and procedures to each registrar of voters and town clerk, and the registrar of voters and town clerks are then responsible as local election officials for how the messages are delivered to staff members, poll workers, and the public. Often, knowledge is distributed in meetings and at conferences, rather than in formal training sessions.

In general, voter outreach programs within the State are limited. Voters can obtain voting information through the Secretary of the State's website and other State websites, as well as through public service announcements. However, when new voting systems or laws directly affect the voter, outreach increases exponentially. For example, in the recent implementation of a new felon restoration law, the Secretary of the State worked with the Department of Corrections, local registrars of voters, town clerks and various civic organizations to inform the public of the recent change in the law. The Secretary of the State also updated the agency website, voter registration cards, informational pamphlets and conducted several media and public service announcements on the subject.

It is important to develop the training and outreach program with the participation of the registrars of voters and town clerks as they are a critical component to the current and future process. Also, the program must account for the changing poll worker and election official workforce, so that training is effective for a group with diverse skills. Finally, HAVA brings increased accessibility to elections. Training programs and subsequent training materials must address the needs of persons with disabilities and individuals with alternative language considerations. In collaboration with the registrars of voters and

town clerks, uniform training utilizing technology as a method of outreach will help provide for smooth implementation of the State Plan. One of the most important points to recognize is that training must be uniform and provided to the Registrars of Voters in writing so that they can continue to train poll workers, moderators, machine mechanics and the general public.

In preparation for the full implementation of the optical scan voting equipment the State of Connecticut conducted training on the use of the new voting technology. This training involved all Registrars of Voters, Town Clerks and Poll Workers. In total over 3,000 individuals were trained on the use of the new technology. In order to facilitate this training, a combination of professional trainers and local subject matter experts were used. The professional trainers trained on the proper use of the technology only. Any questions asked regarding the application of the technology to existing Connecticut Law was answered by the local subject matter expert. The combination of these two trainers worked well and proved to be successful. To date, this is the most aggressive and most extensive training offered by the Secretary of the State on any matter related to elections.

D) VOTING SYSTEM GUIDELINES AND PROCESSES

How the State will adopt voting system guidelines and processes, which are consistent with the requirements of section 301. (HAVA §254 (a) (4)).

As of 2007, Connecticut uses a uniform voting technology in each municipality in the State. Through partnership with the University of Connecticut, the Secretary of the State has reviewed and implemented uniform standards for the use and security of the optical scan voting system used in each municipality. As the use of the new voting systems continue, the Secretary of the State will maintain and create any new guidelines and processes as necessary to continue compliance with HAVA. New processes at the Secretary of the State can take the form of internal procedures, regulations, or State legislation. The Secretary of the State will determine the appropriate method to publicize any new voting system guidelines and processes.

E) CONNECTICUT'S HAVA FUND MANAGEMENT

How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management. (HAVA §254 (a) (5)).

Connecticut established a new fund for election reform that is kept separate and distinct from all other funds within the general fund. This fund contains both federal and state funds. The federal portion of the fund will represent the federal funds provided to the State and expend by the State. The state portion of the fund will represent the funds contributed or spent by the State that represent the 5% match required under HAVA.

The Secretary of the State's Office will work with the State Comptroller, Treasurer and the State Auditors to follow and enforce all mandated fiscal controls and policies.

F) Connecticut's HAVA Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

a. *the costs of the activities required to be carried out to meet the requirements of title III;*
b. *the portion of the requirements payment which will be used to carry out activities to meet such requirements; and*
c. *the portion of the requirements payment, which will be used to carry out other activities. (HAVA §254 (a)(6)).*

At the time of the writing of this plan, HAVA appropriations were less than amounts authorized within the Act. The following table outlines the assumptions regarding federal funding that the State used in creating its budget for HAVA activities.

Federal Funding Assumptions for Connecticut (in Millions)

Federal Fiscal Year	Total Federal Funds	Connecticut Share	5% State Match Requirement**
Early Payments	$650 (Appropriated)	$5.00	N/A
2003	$833 (Appropriated)	$9.88	$0.52
2004	$500 (President's Budget; authorized at $1,000)	$5.83	$0.31
2005	$600 (Authorized)	$7.14	$0.38
2006	0	0	0
2007	$115	$1.36	$.071

Based on these funding levels, the State HAVA budget is representative of the activities to implement and conduct operations and maintenance through calendar year 2010 for the

HAVA Title III requirements and "other" activities. The budget will continue to be revised based on the most current information available regarding federal funding.

The State made the following assumptions and adjustments in preparing the budget:

- The State has implemented and continues to refine the use of new voting systems.
- The cost for the centralized voter registration system (§303(a)) is presented as an average, because the State will continue to upgrade and maintain its current system to meet HAVA requirements. Minimal changes will result in a cost that will be lower while substantive changes will result in a cost that will be higher.
- The cost for education, training, and outreach (§254 (3)) is presented as an average due to the variety of educational options available to the State. Additionally, the State anticipates concurrent initiatives to implement and maintain the voting and centralized voter registration system. The State will need to develop a core curriculum to respond to increased demands on resources.

The State's budget to carry out activities to meet HAVA requirements is provided in the following table:

Connecticut's budget for HAVA Activities

$ Millions		*Funding Source (note 1)*					*Duration (note 3)*	
HAVA Requirements	*Total Cost*	*HAVA §101*	*HAVA §102*	*HAVA §252 & §257*	*State 5% Match*	*Unfunded (note 2)*	*Implementation*	*Operations & Maintenance*
Title III Requirements								
§301 Voting systems	$20.17	-	-	$19.20	$0.97	-	2002-2007	Thru 2010
§302 Provisional voting and voting information requirements	$1.06	-	-	$1.00	$0.06	-	2002-2003	Thru 2010
§303 Centralized voter registration system and requirements for voters who register by mail	$4.25	-	-	$4.00	$0.25	-	2002-2004	Thru 2010
Other Election Reform Activities								
§254(3) Voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III	$2.5	$2.5	-	-	-	-	2002-2005	Thru 2010
§402 Establishment of State-based administrative complaint procedures to remedy grievances	$0.05	$0.05	-	-	-	-	2003	Thru 2010
State Plan – Budget and Fiscal Controls	$0.50	$0.50	-	-	-	-	2003	Thru 2010
State Plan – Technical Infrastructure Strategy	$0.50	$0.50	-	-	-	-	2003	Thru 2010
State Plan- Election Administration Process Redesign	$0.85	$0.85	-	-	-	-	2003	Thru 2010
State Plan – Election Reform Program Management	$0.60	$0.60	-	-	-	-	2003	Thru 2010
Totals	$30.48	$5.00	-	$24.20	$1.28	-		

Notes:

1. State's portion of HAVA funding is estimated based on the funding assumptions outlined above and will be comprised of funds contributed by the State as well as funds already expended to the extent allowable by HAVA. Source for the State's portion of these funds is the Congressional Research Service, *Funds Allocations to States Based on P.L. 107-252: the Help America Vote Act of 2002* (November 15, 2002) and EAC notification (January 24, 2008).
2. Funding source options: State funding other than 5% match, local jurisdiction funding, and/or additional federal funding.
3. Duration for each budget activity is through calendar year 2010.

G) MAINTENANCE OF EFFORT

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2002-(HAVA §254(a)(7)).

Consistent with HAVA §254(a)(7), in using any requirements payment, Connecticut will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of such expenditures in State FY2000.

As in many states, however, this level of funding represents only a small portion of the statewide aggregate operating budget expenditures needed to sustain elections in a given fiscal year, election administration resources have historically been allocated to the municipalities as well. Connecticut's 169 municipality office budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration and IT support. In addition, the registrars of voters and town clerks require an increase in funding for each specific election for poll workers, office staff, ballot production, mailings and Election Day support.

It is therefore important to note that the projected HAVA budget set forth above is based on the assumption that the municipalities will maintain their election operating expenses at existing levels. As a safeguard for this assumption, the State will require proof from each municipality that they have budgeted for future elections at a level not less then the prior years budget for an election of the same type. Without this safeguard in place, the short-term infusion of funds HAVA provides would not be sufficient to maintain the new State election environment in the long term.

H) HAVA PERFORMANCE GOALS AND MEASURES

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met. (HAVA §254 (a)(8)).

The Secretary of the State will establish performance goals and will institute a process to measure progress toward the achievement of these goals. This process will provide the

registrars of voters and town clerks with structure and continued measurable targets for accomplishment. The performance goals and measures will align with the requirements of HAVA.

The Secretary of the State will establish a procedure to oversee continuous management of the State Plan. This procedure will monitor and ensure a uniform performance evaluation process.

Performance Goals

Performance goals provide a high-level view of a project's direction and progress. The State's goal is to achieve election reform compliance with HAVA requirements through the successful implementation of the programs outlined in the State Plan. Below is a detailed chart that will provide the title of the official who is responsible for ensuring that each plan element is met, and the timeline for meeting each of the elements of the Plan.

Plan Elements	State Office	Time frame
Voting Systems: -- §301	Secretary of the State	To be implemented by January 1, 2007 - Complete
Provisional Voting: -- §302	Secretary of the State	To be implemented by January 1, 2004 - Complete
Voter Registration: -- §303(a) -- §303(b)	Secretary of the State	§303(a) to be implemented by January 1, 2004 - Complete §303(b) to be implemented by January 1, 2004 - Complete
Other Activities -- §101 (b)(1), §251(b)(2)		
Technical Infrastructure	Secretary of the State	On-Going
End to End Process Redesign	Secretary of the State	On-Going
Election Reform Program Management	Secretary of the State	On-Going
Education and Training: -- §254 (a)(3)	Initially, Secretary of the State Local – Registrar of Voters	On-Going
Budget and Fiscal Controls: -- §254 (a)(6) -- §254 (a)(2) -- §254 (a)(7) -- §254 (a)(10)	Secretary of the State	On-Going
Complaint Procedures: --Title II, §254 (a)(9) --Title IV, §402	State Elections Enforcement Commission	On-Going

Performance Measures

The State will measure the following five critical areas of each project: scope, schedule, resource, quality, and risk. The Office of the Secretary of the State will develop detailed metrics to collect data to report on performance. The measures will provide the State with the ability to understand, predict, and improve overall performance and communication expectations at the State and local levels.

a) scope - measures internal and external events that may affect cost, implementation schedule, or quality;
b) schedule - measures target start and stop dates, actual start and stop dates, percent complete and overall progress toward a goal;
c) resources - measures estimated and actual cost, estimated and actual project resource needs;
d) quality - measures effectiveness of project to ensure that it meets expectations (error rates, deliverable quality, value to client); and
e) risk - measures impact of events on operations and overall goal.

I) STATE BASED AMINISTRATIVE COMPLAINT PROCEDURES

A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402. (HAVA §254 (a)(9)).
Deadline for Compliance: Prior to certification of State Plan, not later than January 1, 2004

The State of Connecticut has two agencies that are involved in the electoral process. The Secretary of the State is responsible for the administration of elections and the State Elections Enforcement Commission is responsible for the investigation and enforcement of alleged violations of the election laws. The State Elections Enforcement Commission is designed to handle complaints and alleged violations of election laws. Therefore, the State Elections Enforcement Commission will be the agency charged with the implementation of the administration complaint procedure.

The Connecticut General Statutes currently authorize the State Elections Enforcement Commission to administer the administrative complaint procedure according to the provisions set forth in HAVA. The text of such procedure is reproduced below:

Sec. 9-7b. (Formerly Sec. 9-368b). State Elections Enforcement Commission's duties and powers. (a) The State Elections Enforcement Commission shall have the following duties and powers:

(18) To receive and determine complaints filed under the Help America Vote Act, P.L. 107-252, as amended from time to time, by any person who believes there is a violation of any provision of Title III of P.L. 107-252, as amended. Any complaint filed under this subdivision shall be in writing, notarized and signed and sworn by the person filing the complaint. At the request of the complainant, there shall be a hearing on the record, conducted in accordance with sections 4-167e to 4-184, inclusive. The commission shall make a final determination with respect to a complaint prior to the expiration of the ninety-day period beginning on the date the complaint is filed, unless the complainant consents to a longer period for making such determination. If the commission fails to meet the applicable deadline under this subdivision with respect to a complaint, the commission shall resolve the complaint within sixty days after the expiration of such ninety-day period under an alternative dispute resolution procedure established by the commission.

J) EFFECT OF TITLE I PAYMENTS

If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities. (HAVA §254 (a)(10)).

The State of Connecticut received $5.0M in Title I payments.

§101. Payments to States for activities to improve administration of elections.

Connecticut has received the minimum payment available ($5.0M) under §101. These funds will be used for activities to meet the following requirements:

§254 Voter Education	$2.5M
§402 Administrative Complaint Procedure	$0.05M
State Plan – Budget Administration	$0.5M
State Plan – Technical Infrastructure	$0.5M
State Plan – Election Administration Redesign	$0.85M
State Plan – Election Reform Management	$0.6M
Total	**$5.00M**

§102. Replacement of punch card or lever voting machines.

Connecticut was eligible for an additional $1.6M under §102, as calculated in the following chart. However, the State of Connecticut's initial submission of the certification required pursuant to such section was rejected by the GSA pursuant to a request by the Honorable John G. Rowland, Governor of Connecticut. Therefore, the State of Connecticut is not eligible for the additional payment available pursuant to §102. (Table below illustrates the full calculation of Title I and Title II payments available to the State of Connecticut).

Number of Districts		Maximum Payment Amount ($4,000 per District)
734		$3,136,000
§101 Calculated Payments		$3,490,000
Subtotal		**$6,626,000**
§101 Minimum Payment		($5,000,000)
Total §102 Additional Payment Available		**$1,626,000**

K) CONNECTICUT'S HAVA STATE PLAN MANAGEMENT

How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A). (HAVA §254 (a)(11)).

The State intends to use the State Plan as the foundation for its future strategic direction. Consequently, sound and responsible management of the State Plan will be an essential component of the State election community's future success. The State will develop a procedure to administer and oversee ongoing management of the State Plan to ensure all required elements of HAVA are fully implemented.

The State understands and agrees to comply with HAVA requirements related to ongoing management of the State Plan. More specifically, the State agrees that it may not make any material change in the administration of the State Plan unless the change:

(A) is developed and published in the Federal Register in accordance with HAVA §255 in the same manner as the State Plan;

(B) is subject to public notice and comment in accordance with HAVA §256 in the same manner as the State Plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

L) CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year. (HAVA §254 (a) (12)).

This State Plan, effective for 2008 reflects a change in the amount of federal funding available to the State of Connecticut. More specifically, it reflects an additional receipt of $1,362,107 in federal funding and an additional contribution of state funds in the amount of $71,690 (as reported by the EAC by notice dated January 24, 2008).

In addition, this current plan reflects successes by the State of Connecticut in carrying out the provisions of HAVA. More specifically it details the complete implementation of new optical scan voting machines in 2007, completion of the centralized voter registration database, complete implementation of the IVS Vote by Phone system in 2006, and implementation of several other requirements pursuant to HAVA.

Finally, this current plan details a switch in the technology used to implement a statewide voting technology. More specifically, the State of Connecticut initially intended to implement DRE voting technology. However, through the use of the Voting Technology Pilot Program, discussed above, the more reliable and secure optical scan voting system was implemented.

This section will be updated as the Connecticut State Plan is modified.

M) STATE PLAN DEVELOPMENT AND COMMITTEE

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section 255 and section 256. (HAVA §254 (a)(13)).

The Chief State Election Official, Susan Bysiewicz, Secretary of the State invited the following diverse group of stakeholders to participate on the State Planning Committee. As part of the Initial State Plan development, the committee members were divided into three separate subcommittees: 1) Voter Education, 2) Voter Registration, and 3) Voting Systems Standards. These subcommittees met separately from the full committee and reported back advice and ideas to the Planning Committee as a whole. When this Plan was modified, as required by HAVA, the committee members met as a group and reviewed the modifications as a group.

Members of the State Plan Committee, and the primary qualification of each for being a committee member, are as follows: *Note: If the initial invitee appointed a representative to serve in their place, such individual is noted in parenthesis after the invitee.*

- The Honorable M. Jodi Rell, Governor;
- The Honorable Susan Bysiewicz, Secretary of the State;
- The Honorable Richard Blumenthal, Attorney General;
- The Honorable Nancy Wyman, Comptroller (Andrea Jackson-Brooks)
- The Honorable Denise Nappier, Treasurer (Linda Hershman)
- Senator Gayle Slossberg, Chair, Government Administration and Elections Committee;
- Representative Christopher Caruso, Chair, Government Administration and Elections Committee;
- Senator Judith Freedman, Ranking Member, Government Administration and Elections Committee;
- Representative John Hetherington, Ranking Member, Government Administration and Elections Committee;
- Lesley Mara, Deputy Secretary of the State;
- Michael Kozik, Managing Attorney of Elections, Secretary of the State;

- Theodore E. Bromley, Staff Attorney, Elections, Secretary of the State;
- Marisa Morello, Legislative Program Director, Secretary of the State;
- Jeffrey Garfield, Executive Director and General Counsel, State Elections Enforcement Commission;
- Andy Sauer, Executive Director, Common Cause of Connecticut;
- Santa I. Ayala, Registrar of Voters; City of Bridgeport;
- Joseph Camposeo, President, Connecticut Town Clerks Association
- Michael Cordero, Board of Education and Services for the Blind;
- Fernando Betancourt, Executive Director, Latino and Puerto Rican Affairs Commission;
- Jara Burnett, President of the League of Women Voters of Connecticut;
- Sal Bramante, Registrar of Voters, City of Hartford;
- Daniel Carey, Hartford City Clerk, City of Hartford;
- James McGaughey, Executive Director, Office of Protection and Advocacy for Persons with Disabilities;
- Shirley Surgeon, Registrar of Voters, City of Hartford;
- Scot X. Esdaile, President, Connecticut Conference of NAACP Branches;
- Chris Kuell, National Federation for the Blind;
- Judith Beaudreau, Registrar of Voters Association of Connecticut;
- Lori Pelletier, Connecticut AFL-CIO;
- Alma L. Maya, Bridgeport Town Clerk;
- Joseph J. Borges, Jr., Bridgeport Registrar of Voters
- George Cody, President, Registrar of Voters Association of Connecticut;
- Teresa Younger, Permanent Commission on the Status of Women;
- Maritza Falcon, Connecticut Puerto Rican Forum

Based on an objective analysis of the State's current status, this State Plan highlights necessary adjustments and potential next steps in Connecticut's election reform process.

The State Plan Committee will comply with the requirements of §255 and §256 of HAVA.

APPENDIX

A

Secretary of the State of Connecticut
State Plan

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
SEC. 301. VOTING SYSTEMS STANDARDS		
(a) REQUIREMENTS- Each voting system used in an election for Federal office shall meet the following requirements		
(1) IN GENERAL-		
(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall		
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;	Meets.	No action needed.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and	Meets.	No action needed.
(iii) if the voter selects votes for more than one candidate for a single office-- (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.	Meets.	No action needed.
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by		
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	Meets.	No action needed.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)	Meets.	No action needed.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	Meets	No action needed.
(2) AUDIT CAPACITY-		
(A) IN GENERAL- The voting system shall produce a record with an audit capacity for such system.	Meets.	No action needed.
(B) MANUAL AUDIT CAPACITY-		
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	Meets.	No action needed.
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	Meets.	No action needed.
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.	Meets.	No action needed.
(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES- The voting system shall-		
(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;	Meets.	The State met this requirement upon implementation of the IVS vote by phone system.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and	Meets.	The State met this requirement upon implementation of the IVS vote by phone system.
(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).	N/A	N/A
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY- The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).	Meets.	The State will continue to educate the local election officials regarding their duties pursuant to this requirement.
(5) ERROR RATES- The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.	Meets.	No action needed.
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE- Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.	Meets.	The State will continue to develop procedure manuals that define what constitutes a vote for each system used in the State.

APPENDIX

B

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
SEC. 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.		
(a) PROVISIONAL VOTING REQUIREMENTS- If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:		
(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.	Meets.	The State met this requirement upon implementation of the provisional voting program.
(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--		
(A) a registered voter in the jurisdiction in which the individual desires to vote; and	Meets.	The State will meet this requirement upon implementation of the provisional voting program.
(B) eligible to vote in that election.	Meets.	The State will meet this requirement upon implementation of the provisional voting program.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).	Meets.	The State will meet this requirement upon implementation of the provisional voting program.
(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.	Meets.	The State will meet this requirement upon implementation of the provisional voting program.
(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.	Meets.	The State will meet this requirement upon implementation of the provisional voting program.
(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.	Meets.	The State will meet this requirement upon implementation of the provisional voting program.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
States described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.	N/A	Connecticut is not a state described in §4(b) of the NVRA.
(b) VOTING INFORMATION REQUIREMENTS-		
(1) PUBLIC POSTING ON ELECTION DAY- The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.	Meets.	The State complies in terms of posting information, but actual details posted will be adjusted. See below for further detail.
(2) VOTING INFORMATION DEFINED- In this section, the term 'voting information' means--		
(A) a sample version of the ballot that will be used for that election;	Meets.	No action needed
(B) information regarding the date of the election and the hours during which polling places will be open;	Meets.	No action needed
(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;	Meets.	The State met this requirement upon implementation of the provisional voting program.
(D) instructions for mail-in registrants and first-time voters under section 303(b);	Meets.	The State met this requirement upon implementation of the provisional voting program.

Requirement		State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
	(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and	Meets.	The State met this requirement upon implementation of the provisional voting program.
	(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.	Meets.	The State met this requirement upon implementation of the provisional voting program.
(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE- Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.		Meets.	The State met this requirement upon implementation of the provisional voting program.

APPENDIX

C

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
SEC. 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.		
(a) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS-		
(1) IMPLEMENTATION-		
(A) IN GENERAL- Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the computerized list), and includes the following:	Meets.	The State will continue to maintain and monitor the CVRS application to ensure appropriate and continued compliance.
(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.	Meets.	The State will continue to maintain and monitor the CVRS application to ensure appropriate and continued compliance.
(ii) The computerized list contains the name and registration information of every legally registered voter in the State.	Meets.	The State will continue to maintain and monitor the CVRS application to ensure appropriate and continued compliance.
(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.	Meets.	The State will continue to maintain and monitor the CVRS application to ensure appropriate and continued compliance.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(iv) The computerized list shall be coordinated with other agency databases within the State.	Meets. • Currently some coordination with Department of Corrections (receive text file from them monthly). • Established agreements with Department of Motor Vehicles Department of Social Security.	Secretary of the State will work to the extent possible with other State agencies.
(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.	Meets.	The State met this requirement upon complete implementation of CVRS.
(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.	Meets. • Upon receiving a voter registration card, such information is entered at the local level directly onto the CVRS mainframe by the registrars of voters.	The State met this requirement upon complete implementation of CVRS.
(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).	Meets. • The Secretary of the State provides technical support to those municipalities participating on CVRS.	The State met this requirement upon complete implementation of CVRS.
(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.	Meets. • CVRS creates the official registry list for those municipalities currently participating on the system.	The State met this requirement upon complete implementation of CVRS.
(B) EXCEPTION- The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.		

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(2) COMPUTERIZED LIST MAINTENANCE-		
(A) IN GENERAL- The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:		
(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).	Meets.	No action needed.
(ii) For purposes of removing names of ineligible voters from the official list of eligible voters-- (I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and (II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death	Meets. • Convictions sent to State in text file, local election officials process against voter registration rolls	The Secretary of the State will continue to work to the extent possible with other State agencies to comply with this requirement.
(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.	N/A	Connecticut is not a state described in 4(b) of the NVRA.
(B) CONDUCT- The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--		
(i) the name of each registered voter appears in the computerized list;	Meets.	No action needed.
(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and	Meets.	No action needed.
(iii) duplicate names are eliminated from the computerized list.	Meets. • The Secretary of the State generates a list of possible duplicate voters for those towns who participate on CVRS.	The State met this requirement upon complete implementation of CVRS.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(3) TECHNOLOGICAL SECURITY OF COMPUTERIZED LIST- The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.	Meets. • CVRS is housed at the State of Connecticut's Department of Information Technology on the same mainframe as the Connecticut State Police.	No action needed.
(4) MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS- The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:		
(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.	Meets. • Voters who have remained on the inactive list for 4 consecutive years are removed from the official registry list.	No action needed.
(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.	Meets.	No action needed.
(5) VERIFICATION OF VOTER REGISTRATION INFORMATION-		
(A) REQUIRING PROVISION OF CERTAIN INFORMATION BY APPLICANTS-		
(i) IN GENERAL- Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes-- (I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or (II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.	Meets.	No action needed.

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(ii) SPECIAL RULE FOR APPLICANTS WITHOUT DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER- If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.	Meets.	No action needed.
(iii) DETERMINATION OF VALIDITY OF NUMBERS PROVIDED- The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.	N/A	No action needed.
(B) REQUIREMENTS FOR STATE OFFICIALS-		
(i) SHARING INFORMATION IN DATABASES- The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.	Meets.	The Secretary of the State will continue to work to the extent possible with DMV.
(ii) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY- The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).	Meets.	No action needed.
(b) REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL-		
(1) IN GENERAL- Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--		
(A) the individual registered to vote in a jurisdiction by mail; and		

Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(B)(i) the individual has not previously voted in an election for Federal office in the State; or		
(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).		
(2) REQUIREMENTS-		
(A) IN GENERAL- An individual meets the requirements of this paragraph if the individual--		
(i) in the case of an individual who votes in person-- (I) presents to the appropriate State or local election official a current and valid photo identification; or (II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;	Meets.	No action needed.
(ii) in the case of an individual who votes by mail, submits with the ballot-- (I) a copy of a current and valid photo identification; or (II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter	Meets.	No action needed.
(B) FAIL-SAFE VOTING-		
(i) IN PERSON- An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a).	Meets.	No action needed.
(ii) BY MAIL- An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).	Meets.	No action needed.
(3) INAPPLICABILITY- Paragraph (1) shall not apply in the case of a person--		
(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--		

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(i) a copy of a current and valid photo identification; or	Meets.	No action needed.
(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;	Meets.	No action needed.
(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either-- (I) a driver's license number; or (II) at least the last 4 digits of the individual's social security number; and	Meets.	No action needed.
(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or	Meets.	No action needed.
(C) who is--		
(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);	N/A	The State procedure will recognize this exemption.
(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or	N/A	The State procedure will recognize this exemption.
(iii) entitled to vote otherwise than in person under any other Federal law.	N/A	The State procedure will recognize this exemption.
(4) CONTENTS OF MAIL-IN REGISTRATION FORM-		
(A) IN GENERAL- The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:		

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Requirement	State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(i) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.	Meets.	No action planned.
(ii) The question 'Will you be 18 years of age on or before Election Day?' and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on Election Day.	Meets.	No action needed.
(iii) The statement 'If you checked 'no' in response to either of these questions, do not complete this form.'	Meets.	No action needed.
(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.	Meets.	No action needed.
(B) INCOMPLETE FORMS- If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).	Meets.	No action needed.

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Federal Register

Tuesday,
September 9, 2008

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 225

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA–2006–26173]

RIN 2130–AB82

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM) and request for comments.

SUMMARY: FRA proposes to amend its existing regulations addressing accident/incident reporting in order to clarify ambiguous regulations and enhance the quality of information available for railroad casualty analysis. In addition to proposing revisions to its regulations, FRA is proposing revisions to its Guide for Preparing Accident/Incident Reports (FRA Guide) and its Accident/Incident recording and reporting forms, and is requesting comments and suggestions on certain topics of interest.

DATES: *Written Comments:* Written comments on the proposed rule must be received by November 10, 2008. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: If any person desires an opportunity for oral comment, he or she should notify FRA in writing and specify the basis for the request. FRA will schedule a public hearing in connection with this proceeding if the agency received a written request for hearing by October 9, 2008.

ADDRESSES: Anyone wishing to file a comment or request a public hearing should refer to Docket Number FRA–2006–26173 in such comment or request. You may submit your comments and related material or request for a public hearing by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, 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; or
- *Electronically through the Federal eRulemaking Portal.* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–306, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–1331); or Gahan Christensen, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–204, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–1381).

SUPPLEMENTARY INFORMATION: Note that, for brevity, references to a section in part 225 will omit ''49 CFR''; *e.g.* § 225.5. References to the FRA Guide for Preparing Accident/Incident Reports in part 225 will omit ''for Preparing Accident/Incident Reports,'' and refer only to the ''FRA Guide.'' In addition to revising its regulations in the *Code of Federal Regulations*, FRA is proposing to revise the FRA Guide. The proposed FRA Guide is posted on FRA's Web site at *http://safetydata.fra.dot.gov/officeofsafety*, and click on ''Click Here for Changes in Railroad Accident/Incident Recordkeeping and Recording.''

FRA is also revising its instructions for electronically submitting monthly reports to FRA and will publish said instructions in a revised Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods (Companion Guide). Upon completion by FRA the Companion Guide will be posted on FRA's Web site at *http://safetydata.fra.dot.gov/officeofsafety*, and click on ''Click Here for Changes in Railroad Accident/Incident Recordkeeping and Recording.''

Background

In 1910 Congress enacted the Accident Reports Act, Public Law No. 165, recodified as amended at 49 U.S.C. 20901–20903, ''Accidents and Incidents.'' Title 49 U.S.C. 20901 requires in part, that railroad carriers file with the Secretary of Transportation reports on ''*all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month*'' (emphasis added). Title 49 U.S.C. 20902 authorizes the Secretary of Transportation to investigate accidents and incidents. The Secretary delegated the authority to carry out the Accident Reports Act to the Administrator of FRA. 49 U.S.C. 103(c)(1); 49 CFR 1.49(c)(11). FRA's accident/incident reporting requirements were originally issued pursuant to the Accident Reports Act of 1910.

Sixty years later, Congress enacted the Federal Railroad Safety Act of 1970 (FRSA). Public Law No. 91–458, recodified primarily at 49 U.S.C. chapter 201, with penalty provisions in 49 U.S.C. chapter 213, as amended. Section 20103(a) provides that ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' The Secretary delegated this authority to the Administrator of FRA. 49 CFR 1.49(m). FRA reissued its accident reporting regulations, 39 FR 43222, December 11, 1974, under the added authority of FRSA to cover additional railroads, preempt the States from prescribing their own accident reporting regulations, and require reporting of occupational illnesses. FRA's accident/incident reporting requirements, 49 CFR part 225, are currently issued under the dual statutory authority of the Accident Reports Act of 1910 and FRSA.

In 1970, Congress also enacted the Occupational Safety and Health Act (OSH Act). Public Law No. 91–596, codified as amended at 29 U.S.C. 651 *et seq*. While the OSH Act gives the Secretary of Labor a broad, general authority to regulate working conditions that affect the occupational safety and health of employees, it also recognized the existence of similar authority in other Federal agencies. Section 4(b)(1) of the OSH Act, codified at 29 U.S.C.

653(b)(1), provides that the OSH Act shall not apply to working conditions as to which another Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Because FRA exercises statutory authority to prescribe and enforce standards and regulations for all areas of railroad safety under the FRSA, OSHA's jurisdiction may be preempted by FRA under section 4(b)(1) of the OSH Act with regards to certain matters related to railroad safety. See *Policy Statement asserting FRA jurisdiction over matters involving the safety of railroad operations*, 43 FR 10584, March 14, 1978.

With respect to employee injury and illness recordkeeping, however, the Occupational Safety and Health Review Commission ruled that the railroad industry must comply with OSHA requirements and must afford the Secretary of Labor's representatives access to these records. *Secretary of Labor* v. *Contrail* (OSHRC Docket No. 80–3495, 1982). In doing so the Commission indicated that employee injury and illness recordkeeping does not come within the purview of section 4(b)(1) of the OSH Act and, therefore, OSHA's jurisdiction has not been displaced by FRA's employee injury and illness recordkeeping and reporting regulations. Nevertheless, the Commission did state, ''[t]his does not mean that railroad industry employers must use the OSHA form, No. 200, mentioned in section [29 CFR] 1904.2(a). Section 1904.2(a) allows an employer to maintain 'an equivalent which is as readable and comprehensible [as the OSHA 200 form] to a person not familiar with it.' '' Under OSHA's current regulations, 49 CFR 1904.3 states that ''[i]f you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record.'' Accordingly, because FRA's employee injury and illness recordkeeping and reporting requirements employ equivalent standards to those promulgated by OSHA, OSHA does not require railroad carriers to maintain OSHA records in addition to FRA records. Rather, railroad carriers are only required to report employee injuries and illnesses to FRA in accordance with FRA's regulations. FRA makes all railroad employee injury and illness data available to OSHA for use in its complementary program of regulation, and provides this data to the Bureau of Labor Statistics (BLS) each year for inclusion in DOL's national occupational injury and illness database.

Part 225 contains a series of specific accident/incident recording and reporting requirements. The purpose of the FRA's accident/incident recordkeeping and reporting regulations is ''to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its statutory responsibilities under 49 U.S.C. chapters 201–213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on prevention railroad injuries and accidents.'' 49 CFR 225.1. Part 225's central provision requires that each railroad subject to part 225 submit to FRA monthly reports of all accidents and incidents that meet FRA's reporting criteria. 49 CFR 225.11. Railroad accidents/incidents are divided into three groups, each of which correspond to the type of reporting form that a railroad must file with FRA: (1) Highway-rail grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) deaths, injuries and occupational illnesses. *See* 49 CFR 225.19.

In 1996, FRA published extensive amendments to its accident/incident reporting regulations. 61 FR 30940, June 18, 1996, and 61 FR 67477, December 23, 1996. This was the first major revision of the accident/incident reporting requirements since 1974. The primary purpose of the revision was to increase the accuracy, completeness, and utility of FRA's accident database and to clarify certain definitions and regulatory requirements. Among other things, these amendments required railroads to adopt and comply with an internal control plan (ICP) to ensure accurate reporting of accidents and incidents.

In 2003, FRA again published extensive amendments to its accident/incident reporting regulations (FRA's 2003 Final Rule). 69 FR 10107–10140, March 3, 2003. The primary purpose of these revisions was to conform FRA's accident/incident reporting requirements to OSHA's newly revised occupational injury and illness recording and reporting requirements. 66 FR 5916–6135, January 19, 2001 (codified at 29 CFR parts 1904 and 1952) (OSHA's 2001 Final Rule). FRA's 2003 Final Rule also addressed other issues and provided for an alternative method of recording claimed occupational illnesses with the advent of Form FRA F 6180.107, ''Alternative Record for Illness Claimed to be Work-Related.''

In this document, FRA proposes to amend its accident/incident reporting regulations in order to: Clarify ambiguous definitions and regulations; add necessary definitions; require the reporting of additional types of injuries to all persons; require the reporting of suicide data; include a comprehensive list of accident/incident reporting exceptions; allow for consolidated accident/incident reporting by integrated railroad systems; require railroads to complete (by amending the definition for ''Accountable Injury or Illness'') a Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' of all injuries and illnesses when such abnormal condition or disorder manifests *within* the work environment regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment; set forth requirements for railroad electronic recordkeeping systems for purposes of part 225; update regulatory text, as applicable; enhance the quality of information available for railroad casualty analysis; clarify and limit which highway-rail grade crossing fatalities must be telephonically reported to the National Response Center (NRC); clarify and refine the requirements and criteria for using and retaining Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work Related,'' and the alternative railroad-designed record; eliminate the oath and notarization requirements for Form FRA F 6180.55, ''Railroad Injury and Illness Summary''; allow for the electronic submission via the Internet of Forms FRA F 6180.54, ''Rail Equipment Accident/Incident Report''; 6180.55, ''Railroad Injury and Illness Summary''; 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)''; 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report''; and 6180.81, ''Employee Human Factor Attachment''; set forth record retention requirements for certain accident/incident recording and reporting records not previously addressed; and update FRA's address information. In addition to proposing revisions to its regulations, FRA is proposing revisions to the FRA Guide and to certain accident/incident

recording and reporting forms. The proposed FRA Guide and forms are posted for public notice and comment on FRA's Web site at *http://safetydata.fra.dot.gov/officeofsafety*, and click on ''Click Here for Changes in Railroad Accident/Incident Recordkeeping and Recording.''

FRA also requests comments and suggestions on four issues of concern. First, FRA requests comments and suggestions for any additional information that might be gathered on Form FRA F 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report,'' that would be useful in determining how and why highway-rail grade crossing accidents/incidents occur.

Second, FRA requests comments and suggestions on whether FRA should require railroads to complete longitude and latitude blocks on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)'' (blocks 5s and 5t) for trespassers only, and Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report'' (blocks 50 and 51). Currently, completion of longitude and latitude data on both of these forms is optional.

Traditionally, FRA and the railroad industry have relied on the railroad milepost system to reference location, and in many cases, location data derived from the milepost system is accurate for short-term issues. Over the long-term, however, railroads do change mileposts during mergers and reorganizations. Also, mileposts can be inaccurate when a railroad is able to build a shorter link, or when a railroad does not remove old mileposts when replacement mileposts, which have a different starting location, are installed. Accordingly, both FRA and the transportation industry are moving aggressively to collection of geospatial data (*i.e.*, longitude and latitude coordinates) in order to better understand transportation needs, take counter measures when there are problems with a specific area or transportation link, and facilitate planning.

FRA is exploring the collection of longitude and latitude data (for trespassers only) on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet),'' as a means of improving railroad safety in the area of trespasser injuries and fatalities. While there are no Federal regulations dealing with unauthorized access to (*i.e.*, trespassing on) railroad property, FRA has significantly contributed to Operation Lifesaver, Inc. (a nonprofit organization devoted to highway-rail crossing safety and trespasser prevention programs) in hopes of reducing the number of trespasser incursions. FRA believes that the collection of longitude and latitude coordinates when a trespasser is injured is the beginning of the process to define ''hot spots'' of unauthorized access to railroad property. Identification of such hot spots may be used to target areas for increased law enforcement surveillance by public and railroad security forces, and to assist Operation Lifesaver in reaching out to schools and other organizations in the hot zones for increased educational awareness of safety concerns around railroad operations.

FRA is exploring the collection of longitude and latitude data on Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report,'' as a means of improving railroad safety in the area of train accidents. FRA needs a permanent means of determining the location of an accident. This is especially meaningful when a release of hazardous materials or leakage of diesel fuel has occurred. Having the geographic coordinates for all train accidents will allow FRA to develop better inspection planning, identify locations of hazardous materials contamination affecting the health and/or environment, and provide to the Transportation Security Administration another tool for security planning.

Third, FRA is considering changing the method by which telephonic reports of accidents/incidents, as required by § 225.9, are made to FRA. Under FRA's current regulations, railroads are required to telephonically report certain accidents/incidents to the NRC, which in turn, provides notification of the accident/incident to FRA. FRA is reviewing whether it would be preferable for railroads to report these accidents/incidents directly to FRA via electronic transmission, and invites comments and suggestions on this issue.

Fourth, FRA is proposing in this NPRM to require railroads to report to FRA on Form FRA F 6180.55a suicides and attempted suicides, otherwise referred to as ''suicide data,'' and requests comments addressing State access to such reports. Section § 225.1 states that, ''[i]ssuance of these regulations under the Federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses that occur in that State.'' FRA realizes that suicide data may provide valuable information to State research and suicide prevention programs, and wants States to have needed access to suicide data. At the same time, however, FRA is concerned about the use and public availability of suicide data. Accordingly, FRA is requesting comments on how to ensure that restrictions on the use and public availability of suicide data at the State level remain consistent with those FRA has prescribed in proposed § 225.41. Specifically, that suicide data (as defined in § 225.5) will not be included in any summaries of data on the number of injuries and illnesses associated with railroad operations; that suicide data is not publicly accessible; and that suicide data will only be available to the public in aggregate.

Section-by-Section Analysis

Technical Amendment: Throughout the rule text FRA has updated the agency's address to reflect FRA's relocation to the new U.S. Department of Transportation headquarters building. This revision affects §§ 225.7(a), 225.11(b), 225.12(g)(3), and the introductory paragraph of § 225.21.

Section 225.3 Applicability

In this section, FRA proposes a technical amendment to the introductory text of paragraph (b) with respect to that paragraph's reference to FRA's required ICP elements. Currently, paragraph (b) refers only to ICP elements 1 through 10. FRA proposes to revise the paragraph to include element number 11 (added in FRA's 2003 Final Rule), which requires railroads to include in their internal control plans a statement that specifies the name, title, and address of the custodian of the railroad's Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related,'' records and all supporting documentation, as well as where the documents are located. *See* 68 FR 10107, 10139, March 3, 2003.

Section 225.5 Definitions

FRA proposes to amend paragraph (1) of the definition of ''Accident/incident'' to conform to the language of the FRA Guide and to clarify: That a highway-rail grade crossing accident/incident is not limited only to ''impact between an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian'' as stated in the current definition; that sidewalks, pathways, shoulders and ditches associated with the crossing are considered to be part of the crossing site; and that the term ''highway user'' includes pedestrians, cyclists, and all other modes of surface transportation, motorized and unmotorized.

FRA proposes to amend paragraph (3) of the definition of ''Accident/incident'' to conform to the revised language proposed for § 225.19(d); and to reference, rather than explicitly list, the general reporting criteria set forth in § 225.19(d). *See* Section-by-Section Analysis for § 225.19(d), ''Primary groups of accidents/incidents; Death, injury and occupational illness.''

FRA proposes to amend the definition of ''Accountable injury or illness'' to conform to the definition of ''injury or illness'' as proposed in this notice; to remove the word ''activity'' from the phrase ''by an event, exposure, or activity in the work environment'' as redundant since the definition of ''event or exposure'' as proposed in this notice is inclusive of activities; and to delete the phrase ''not otherwise reportable'' due to its to ambiguity and replace referenced text with the specification that an accountable injury or illness ''does not meet the general reporting criteria listed § 225.19(d)(1) through (d)(6).'' *See* Section-by-Section Analysis for § 225.19(d), ''Primary groups of accidents/incidents; Death, injury and occupational illness.'' These changes are clarifying in nature and do not pose any change to FRA's accident/incident recording or reporting requirements.

FRA is also proposing to amend the definition of ''Accountable injury or illness'' related to injuries and illness that occur within the work environment. Specifically, FRA is proposing that when an abnormal condition or disorder of a railroad employee manifests *within* the work environment and causes or requires the railroad employee to be examined or treated by a qualified health care professional, but does not meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6); such condition or disorder is an accountable injury or illness regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment. When such condition or disorder manifests *outside* the work environment it is an accountable injury or illness if the condition or disorder is discernably caused by an event or exposure in the work environment.

FRA's purpose in making this amendment is to ensure that each potentially reportable injury and illness is tracked and evaluated. In many cases injuries and illness, and/or the signs and symptoms thereof, of one kind or another can be manifest in the work environment without the reason(s) (i.e., causes of or contributors to) being apparent. In such cases railroads may prematurely attribute the cause of the injury or illness solely to a non-work-related event or exposure that occurred outside the work environment. Consequently, the railroad does not consider the injury or illness to be ''accountable'' and does not complete a Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' for that injury or illness. In many of these cases however, an event or exposure in the work environment may in fact be a cause of, or contributor to, the injury or illness, but because the railroad made a premature determination that the injury or illness is not work-related, the railroad may not subsequently perform adequate inquiry (e.g., communication with the employee when the employee returns to the work environment after treatment, review of medical records, etc.) to make an accurate causal determination. Ultimately, this type of oversight will result in the under-reporting of employee injuries and illnesses to FRA, and because the railroad did not complete a Form FRA F 6180.98 to initially record the injury or illness, no audit trail is created. Thus, FRA is unable to later evaluate the reportability of the injury or illness. In order to rectify this problem, FRA is proposing that the definition of ''Accountable Injury or Illness'' be amended to require railroads complete Form FRA F 6180.98 records for all employee injuries and illnesses that involve signs or symptoms that surface at work, regardless of whether the injury or illness is discernably caused or contributed to by an event or exposure in the work environment. Such revision is necessary in order for FRA to effectively enforce its railroad injury and illness reporting requirements. Unless FRA has the opportunity to examine those injuries and illness which manifest in the work environment but are deemed as being not work-related (thus ''nonreportable''), as well as those deemed ''reportable'' by the railroad, it is difficult for FRA to determine whether a railroad is making appropriate reporting decisions.

FRA proposes to amend the definition of ''Accountable rail equipment accident/incident'' to mean ''a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that does not result in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.''

Under the current definition, an accountable rail equipment accident/incident must be both not reportable, and (if not attended to) disrupt railroad service. This revision eliminates the disruption of service criteria. The agency believes this change simplifies recording requirements related to accountable rail equipment accidents/incidents, and will result in railroads maintaining a more complete set of records of accountable rail equipment accidents/incidents.

FRA proposes to add a definition for ''Discernable cause.'' FRA's accident/incident reporting regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Moreover, maintaining such compatibility allows railroads to report occupational casualties only to FRA, rather than to OSHA and to FRA. OSHA's regulations provide that ''[i]f you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record.'' *See* 29 CFR 1904.3.

Note that under OSHA's regulations, the term ''recording''' is used. Under FRA's regulations and Guide, the term ''reporting'' is used. FRA has always used the term ''reporting'' in its regulations and the FRA Guide, and because the Accident Reports Act of 1910, as amended, requires ''a railroad carrier [to] file a report * * * on all accidents and incidents * * *'' 49 U.S.C. 20901.

With respect to employee injury and illness recording, OSHA's 2001 Final Rule, states that ''each employer * * * must record each fatality, injury and illness that is work-related; and is a new case; and meets one or more of the general recording criteria * * * or the application to specific cases.'' 66 FR 5916, 5945, January 19, 2001, codified at 29 CFR 1904.4(a). OSHA's 2001 Final Rule goes on to state that ''[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness,'' and that ''[w]ork-relatedness is presumed for injuries and illnesses resulting from events or

exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b)(2) specifically applies.'' 66 FR 5916, 5946, January 19, 2001, codified at 29 CFR 1904.5(a).

After OSHA's 2001 Final Rule was published, the National Association of Manufacturers (NAM) filed a legal challenge to the final rule, with respect to (among other things) the final rule's presumption of work-relatedness, in the United States District Court for the District of Columbia. On November 16, 2001, OSHA and NAM entered into a settlement agreement to resolve NAM's legal challenge. The parties then entered into a revised settlement agreement on November 29, 2001. The revised settlement agreement was published in the **Federal Register** at 66 FR 66943, December 27, 2001. As part of the NAM–OSHA settlement, the parties agreed to the following:

> Section 1904.5(a) states that ''[the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. Work relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment * * *'' Under this language [29 CFR 1904.5(a)], a case is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to [sic] pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.
>
> Section 1904.5(b)(2) states that a case is not recordable if it ''involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.'' This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a discernable cause of the injury or illness or of a significant aggravation to a pre-existing condition.
>
> Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, the employer ''must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.'' This means that the employer must make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness, or a significant aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.''

In 2003, FRA revised its accident/incident reporting regulations to conform, to the extent practicable, to OSHA's revised requirements. 68 FR 10108–10140, March 3, 2003. In doing so FRA took into account the NAM–OSHA settlement agreement, in particular the agreement's reference to the term ''discernable''' to qualify or describe cause. FRA included the phrase ''discernable cause'' in its definitions of ''Accident/incident,'' ''Accountable injury or illness,'' and ''Occupational illness'' in § 225.5, and added the phrase to its reporting requirement for ''Deaths, injuries and occupational illnesses'' at § 225.19(d). While FRA did discuss the meaning of ''discernable cause'' in the preamble of FRA's 2003 Final Rule, *see* 68 FR 10108, 10127, March 3, 2003, the agency did not explicitly define the term ''Discernable cause'' in the rule text. In order to clarify the meaning of this term, FRA therefore proposes to include in § 225.5 a definition for ''Discernable cause'' to mean, ''a causal factor capable of being recognized by the senses or the understanding.'' *See Webster's Third New International Dictionary*, (1961). *See also, Webster's Third New International Dictionary, Unabridged*, (1971). And to explain in the text of the definition that ''[a]n event or exposure arising from the operation of a railroad is a discernable cause of (i.e., discernably caused) an injury or illness if, considering the circumstances, it is more likely than not that the event or exposure is a cause of the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (i.e., a contributing factor).''

For clarification purposes, FRA proposes to add a definition for ''Event or exposure'' to include an ''incident, activity, or occurrence'' to clarify that event or exposure is a term that is to be broadly interpreted and to eliminate redundant language in the rule text.

FRA proposes to amend the definition of ''Event or exposure arising from the operation of a railroad'' in order to clarify its meaning. The term ''event or exposure arising from the operation of a railroad'' and its definition were added to § 225.5 in FRA's 2003 Final Rule to replace ''arising from the operation of a railroad'' and its definition. The agency made this amendment to tailor more narrowly what types of accidents/incidents were considered to ''arise from the operation of a railroad'' and therefore be potentially reportable. 68 FR 10108, 10115–16, March 3, 2003.

FRA's current definition of ''Event or exposure arising from the operation of a railroad'' has a three-tier definition:

The first tier defines ''event or exposure arising from the operation of a railroad'' broadly ''with respect to any person on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to its rail transportation business or an exposure related to the activity.'' FRA proposes to revise this first tier of the definition by changing ''any person'' to ''a person who is not an employee of the railroad.'' Such change is consistent with the intent of the paragraph as stated in the preamble to FRA's 2003 Final Rule:

> FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business.

68 FR 10108, 10109, March 3, 2003. This lends to the accuracy of the definition, since tier one was intended to apply only to persons who are not railroad employees. FRA also proposes to amend this paragraph for purposes of clarification by removing the phrase ''any activity of the railroad'' such that tier one of the definition, as proposed, would indicate that with respect to a person who is not an employee of the railroad, an event or exposure that occurs on property owned, leased, or maintained by the railroad and is related to the performance of the railroad's rail transportation business. FRA is proposing to delete the reference to ''activity'' since the proposed definition of ''event or exposure'' includes ''activity.''

The second tier also defines ''event or exposure arising from the operation of a railroad'' broadly, but ''with respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to that activity.'' FRA proposes to amend this paragraph for purposes of clarification by revising the definition to state ''with respect to a person who is an employee of a railroad, an event or exposure that is work-related.'' This amendment thus removes the phrase ''any activity of the railroad,'' since the proposed definition of ''event or exposure'' includes ''activity.'' It also removes the phrase ''(whether on or off property owned, leased, or maintained by the railroad)'' and ''that is related to the performance

of the railroad's rail transportation business * * *'' since ''work-related'' encompasses both of those requirements.

The third tier defines ''Event or exposure arising from the operation of a railroad narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.*, a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business.'' 68 FR 10108, 10116, March 3, 2003. FRA proposes no substantive change to this tier of the definition, but is incorporating the tier three definition into the tier one (paragraph (1) of the definition of ''event or exposure arising from the operation of a railroad'') since both tier one and tier three apply to persons who are not railroad employees.

The amendments to tier one, tier two and tier three of the definition of ''Event or exposure arising from the operation of a railroad'' will then be organized such that paragraph (1) will be applicable to non-employees and paragraph (2) will be applicable to employees. These amendments are clarifying measures and do not change the meaning of the term. The definition continues to mean, consistent with FRA's 2003 Final Rule, ''that a railroad would not have to report to FRA the death of or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work-related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor.'' 68 FR 10108, 10116, March 3, 2003.

FRA proposes a technical amendment to the definition of ''General reporting criteria'' to include criteria number [225.19(d)] (6), ''Illness or injury that meets the application of any of the [enumerated] specific case criteria,'' which was inadvertently omitted in FRA's 2003 Final Rule.

FRA proposes to add a definition of ''Injury or illness'' to mean ''an abnormal condition or disorder,'' (this is consistent with OSHA's definition at 29 CFR 1904.46), and to provide examples of injuries and illnesses. In doing so, FRA clarifies that pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6). See OSHA's Final Rule, 66 FR 5916, 6080, January 19, 2001. FRA also clarifies that a Musculoskeletal Disorder is an injury or illness. See OSHA's Final Rule, 66 FR 5916, 6017, January 19, 2001 and 68 FR 38601, 38602, June 30, 2003. Incorporation of such definition does not represent any change to FRA's current accident/incident recording and reporting requirements. The definition has been included in an effort to eliminate confusion as to what constitutes an injury or illness. FRA wishes to emphasize that injuries and illnesses are reportable only if they are new cases discernably caused or significantly aggravated by an event or exposure arising from the operation of a railroad, that meet one or more of the general reporting criteria.

FRA proposes to amend the definition of ''New case'' to apply to all persons rather than only to employees. Correspondingly, FRA is replacing the phrase ''in the work environment'' to ''arising from the operation of a railroad'' since the term '' work environment'' also applies only to employees. Such change is consistent with the statutory requirement that railroads report to FRA ''all accidents and incidents resulting in injury or death to an individual * * * arising from the carrier's operations during the month,'' not just accidents and incidents resulting in injury or death to railroad employees. *See* 49 U.S.C. 20901. FRA considers this amendment a correction to the current definition that does not affect reporting requirements. FRA also proposes to include the descriptor ''discernably'' before ''caused'' in the definition of ''New case'' to be consistent with the rest of the part 225 regulatory language.

FRA proposes to amend the definition of ''Qualified health care professional'' to remove the example regarding an otolaryngologist. The definition currently states, ''[f]or example, an otolaryngologist is qualified to diagnose a case of noise induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of repetitive motion injuries'' since, as a licensed physician, an otolaryngologist can diagnose conditions other than those related to the ears, nose, throat, and related structures of the head and neck.

FRA proposes to amend the definition of ''Railroad.'' Currently, part 225 defines ''railroad'' as ''a person providing railroad transportation.'' In order to attain better consistency with Congress' 1994 revisions to 49 U.S.C. 20102, FRA proposes to define ''railroad'' as meaning ''a railroad carrier,'' and add a definition to § 225.5 for ''railroad carrier'' as meaning a ''person providing railroad transportation.''

Congress added the term ''Railroad carrier'' to 49 U.S.C. 20102 in 1994 (Pub. L. No. 103–272, 108 Stat 745), as part of a larger effort ''[t]o restate the laws related to transportation in one comprehensive title'' and ''attain uniformity [of language] within the title.'' *See* House Report No. 103–180 at 3, reprinted in 1994 U.S.C.C.A.N. 818, 820. Specifically, Congress defined ''railroad carrier'' at 49 U.S.C. 20102(2) as a ''person providing railroad transportation,'' in order to ''distinguish between railroad transportation and the entity providing railroad transportation.'' *See* House Report No. 103–180 at 79, reprinted in 1994 U.S.C.C.A.N. 818, 898. FRA's definition of ''railroad transportation'' remains unchanged.

FRA proposes to add a definition for ''Significant aggravation of a pre-existing injury or illness.'' This definition is consistent with that of OSHA as set forth at 29 CFR 1904.5(b)(4) and the current version (effective May 1, 2003) of the FRA Guide. FRA proposes to add the definition to § 225.5 for clarification and ease of reference.

FRA proposes to add a definition for ''Suicide data.'' Consistent with FRA's proposal to remove suicide and attempted suicide from its current § 225.15 reporting exceptions (*see* Section-by-Section Analysis for 225.15, ''Accidents/Incident not to be reported''), and begin collecting suicide related data, FRA proposes to add to § 225.5 a definition for ''Suicide data,'' to mean data regarding the death of an individual due to that individual's commission of suicide as determined by a coroner or other public authority; or injury to an individual due to that individual's attempted commission of suicide as determined by a public authority. FRA emphasizes that only the death of or injury to the individual who committed the suicidal act is considered to be suicide data. FRA will not report suicide data to OSHA. FRA will not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide

data in a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act. *See* § 225.41, ''Suicide data'' as proposed in this NRPM.

FRA proposes to amend the definition of ''Work environment'' to explain that the work environment means the establishment and other locations where on or more railroad employees are working or present as a condition of employment. Such addition brings additional clarity and better conforms FRA's definition to OSHA's definition at 29 CFR 1904.5(b)(1).

FRA proposes to revise the definition of ''Work-related'' by removing the words ''incident, activity, * * * or the like'' and replacing them with ''event or exposure'' since the definition of ''event or exposure'' as proposed in this section encompasses those terms. FRA also explains in the definition that an injury or illness is presumed work-related if an event or exposure in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness; that the causal event need not be peculiarly occupational in nature so long as it occurs at work; that the causal event need only be a cause (i.e., contributory factor); and that if an injury or illness is within the presumption, the employer can rebut the work-relatedness only by showing that the case falls within an exception listed in 49 CFR 225.15. Such presumption is consistent with the NAM–OSHA settlement agreement, 66 FR 66943, December 27, 2001, and with OSHA's regulations which require that ''[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.'' 29 CFR 1904.5(a). OSHA's regulation goes on to explain that ''[w]ork-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b) specifically applies.'' *Id.* At 29 CFR 1904.5(b)(2), OSHA sets forth nine exceptions to its injury and illness reporting requirements. FRA's reporting exceptions are currently set forth at § 225.15 and in the FRA Guide. FRA is proposing in this Notice to include all FRA accident/incident reporting exceptions in § 225.15. *See* Section-by-Section Analysis for § 225.15, ''Accidents/Incident not to be reported.''

In cases where it is not obvious whether a precipitating event or exposure occurred in the work environment, the employer must evaluate the employee's work duties and environment to decide whether it is more likely than not that an event or exposure at work contributed to the employee's injury or illness. FRA's requirement is consistent with that of OSHA at 29 CFR 1904.5(b)(3) where OSHA addresses how an employer should handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment, stating ''in these situations, [the employer] must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition'' and with the NAM–OSHA settlement agreement, 66 FR 66943, December 27, 2001.

FRA also wishes to clarify that an event or exposure that occurs in the work environment need not have a clear connection to a specific work activity, condition, or substance that is peculiar to the railroad transportation business in order to be an ''event or exposure arising from the operation of a railroad.'' Examples of events or exposures arising from the operation of a railroad include an employee tripping for no apparent reason while walking across a level floor; an employee being sexually assaulted by a co-worker; or an employee being injured by an act of violence perpetrated by one co-worker against a third party. *See* OSHA's 2001 Rule, 66 FR 5916, 5946, January 19, 2001. In such cases the employee's job-related tasks and exposures did not create or contribute to the risk that an injury or illness would occur. *Id.* Rather, these activities are events or exposures arising from the operation of a railroad because they occurred in the work environment. Likewise, normal body movements (e.g., walking, climbing a staircase, bending down, sneezing) engaged in by an employee at the time of injury are also events arising from the operation of a railroad, even if the body movement is not related to the employee's job related tasks. See 66 FR 5916, 5957–5958, January 19, 2001. Correspondingly, events or exposures involving contractors or volunteers that occur on property owned, leased or maintained by the railroad, also arise from the operation of a railroad even if they do not have a clear connection to a specific work activity, condition, or substance that is peculiar to the railroad transportation business.

Section 225.6 Consolidated Reporting

FRA proposes to add § 225.6 addressing consolidated railroad accident/incident reporting for certain integrated railroad systems.

Title 49 U.S.C. 20901 requires that each ''railroad carrier'' submit to FRA a monthly report of its accidents/incidents. Title 49 U.S.C. 20102 defines a ''railroad carrier'' as a ''person providing railroad transportation.'' ''Person,'' as defined by 1 U.S.C. 1 ''include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.'' Generally, FRA has considered subsidiary corporations as discrete ''persons'' or ''railroad carrier[s],'' each individually responsible for complying with FRA's accident/incident reporting requirements, regardless of the subsidiary's affiliation with any other incorporated railroad. This interpretation is consistent with the general rule that the corporate parent shareholder is not liable for the debts of the subsidiary. As such, FRA has generally treated each incorporated ''railroad carrier'' as an independent entity responsible for complying with Federal railroad safety laws, regardless of the railroad's affiliation with any other incorporated entity.

Due to the proliferation of mergers within the railroad industry however (since 1970, the dozens of Class I railroads then in existence have merged into an industry structure of just seven Class I railroads), incorporation is no longer a reliable indicator of who is truly ''providing railroad transportation'' since merged railroads do not always become a single legal entity. Many railroad mergers were structured so that the acquiring (*i.e.*, parent) railroad allowed the target (*i.e.*, subsidiary) railroad to survive as a separate legal entity after the merger. Acquiring railroads preferred this type of merger because certain rights and properties of the target railroad were more likely to remain intact than if the target disappeared. This proclivity still holds true.

Because merged railroads may operate as independent entities, or as a single larger commonly controlled integrated railroad system, compliance with and enforcement of part 225 is increasingly difficult, since the operations of merged railroads often become so integrated that parent railroad corporations (and consequently FRA) are not necessarily able to disaggregate their operations, especially in terms of identifying which

subsidiary railroad employs a worker or owns the equipment or trackage involved in an accident/incident. As a result, accident and incident recording and reporting inaccuracies by the railroads are more likely to occur, and remain undiscovered by FRA, thus undermining the integrity of FRA's accident and incident databases. For these reasons, Canadian National Railroad, in the latter half of 2004, requested that FRA allow them to report their operationally integrated subsidiary's accidents/incidents on a consolidated basis, rather than discreetly. Upon review of the issue, for purposes of part 225 only, FRA proposes to adhere to the view that where a parent corporation dominates its subsidiary railroads and operates as a single, integrated United States railroad system, FRA may consider the dominating corporation as principal (*i.e.*, the ''provider of railroad services'') for the entire system, and the subsidiary corporation(s) as agent, thus making the acts of the latter in effect the acts of the former. In other words, FRA may treat the parent corporation as the ''railroad carrier'' for that system. This means that the parent corporation is responsible for the system's compliance with part 225, and that any time an FRA representative finds an instance of noncompliance by any of the subsidiaries making up the system, the FRA representative may recommend to FRA's Office of Chief Counsel that a civil penalty be issued against the parent corporation.

A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of part 225 compliance. The written request must provide a list of the subsidiary railroads controlled by the parent corporation and an explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

If, upon review of this information, it is FRA's belief that ''the provider of railroad services'' is actually the parent corporation, FRA may treat the parent corporation as the railroad carrier for purposes of part 225. If the agency grants the request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, consenting to assume responsibility for compliance with part 225 for all named subsidiaries making up the system, and consenting to guarantee any liabilities owed to the United States government that are incurred by its named subsidiaries for violating part 225. Any change to the subsidiaries making up the railroad system will require execution of an amended agreement.

This interpretation is consistent with the Surface Transportation Board's (STB) Decision Ex Parte No. 634 (Proposal to Require Consolidated Reporting by Commonly Controlled Railroads) (November 7, 2001). In this decision, STB required that each group of railroads that operate as a single, integrated United States rail system whose cumulative operating revenues meet the Class I threshold, submit consolidated annual financial reports that combine the operations of all their commonly controlled railroads that operate as an integrated rail system within the United States. Prior to this decision, STB did not require commonly owned railroads to report on a consolidated basis. As such, families of railroads that were operated as an integrated system with cumulative operating revenues well above the $250 million threshold were not required to file financial reports so long as the operating revenues of each individual railroad was less that $250 million. By requiring that all components of an integrated system be combined, STB asserts that it is able to gather more meaningful and accurate information on the large rail systems operating in the United States, and determine whether the railroad systems are Class I (large railroads), Class II (medium-sized railroads), or Class III (smaller railroads). Likewise, FRA believes that by treating all components of an integrated system as a single railroad, FRA will be able to gather more meaningful and accurate accident/incident data.

Section 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

FRA proposes to clarify its accident/incident telephonic reporting requirements related to fatalities that occur at highway-rail grade crossings as a result of train accidents or train incidents.

Currently, FRA requires railroads to report immediately, via telephone, to the NRC ''a fatality at a highway-rail grade crossing as a result of a train accident or train incident.'' § 225.9(a)(2)(iii). FRA has found that confusion exists as to the applicability of this requirement when death does not actually occur at the scene of the highway-rail grade crossing accident/incident, but some hours or days later, after the fatally injured person is taken to the hospital for treatment.

Upon review, FRA proposes to revise the telephonic reporting requirement for highway-rail grade crossing fatalities to require that such fatalities must be telephonically reported only if death occurs within 24 hours of the accident/incident. This proposal is consistent with Department of Transportation, Office of Inspector General's November 28, 2005, recommendation (Report No. MH–2006–016) to FRA that the FRA amend § 225.9 to clarify reporting requirements and include criteria that require railroads to report to NRC any death that occurs within 24 hours of a highway-rail grade crossing accident/incident.

FRA also proposes a technical amendment to paragraph (a)(2)(iv) by adding the words ''or more'' after $150,000 to clarify that the telephonic reporting requirement is triggered when a train accident results in damage of $150,000 or more to railroad and nonrailroad property.

Section 225.11 Reporting of Accidents/Incidents

In this section, FRA proposes to list each primary accident/incident group described in § 225.19 (*i.e.*, Highway-Rail Grade Crossing; Rail Equipment; and Death, Injury and Occupational Illness) by subsection. By identifying each group of accidents/incidents with a different subsection, FRA will be better able to access data and differentiate among data elements. For example, currently, if FRA issues a violation against a railroad for alleged non-compliance with § 225.11, FRA's case tracking database captures this as a violation of § 225.11. With such limited information, FRA is unable to easily identify what type of reporting non-compliance is alleged (*i.e.*, failure to report a highway-rail grade crossing accident/incident; failure to report a rail equipment accident/incident or failure to report an accident/incident involving a death, injury or occupational illness). Such capability will provide FRA with better and more useful data, as well as quicker access to the data.

FRA also proposes to update this section to reflect the proposed provisions in § 225.37 regarding filing accident/incident reports with FRA via optical media (CD–ROM) and electronically via the Internet.

§ 225.15 Accidents/Incidents Not To Be Reported

In this section, FRA proposes to revise § 225.15 to include a comprehensive list of injury/illness and rail equipment accident/incident reporting exceptions (formerly listed partially in § 225.15 and in the FRA Guide). As discussed in the Section-by-Section Analysis of § 225.5, ''Definitions'' with respect to the

definition of ''Work-relatedness,'' OSHA's regulations require that ''[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.'' 29 CFR § 1904.5(a). OSHA's regulation goes on to explain that ''Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b) specifically applies.'' 29 CFR 1904.5 (a). FRA has established certain reporting exceptions in § 225.15 and has also adopted OSHA's reporting exceptions in the current FRA Guide.

FRA's proposed list of exceptions includes both the FRA orientated exceptions and exceptions set forth by OSHA at 29 CFR 1904.5(b) as adopted by FRA. Upon drafting this Notice to incorporate the reporting exceptions into this section, FRA reviewed the applicability of each injury and illness reporting exception as related to the class of injured person, and incorporates this information into the rule text.

In making this revision, FRA leaves paragraph (a) substantively unchanged.

In paragraph (b), FRA addresses reporting exceptions for Class A—Worker on Duty—Employee injuries and illness. Paragraph (b)(1) retains the current paragraph (b) reporting exception relating to injuries and illnesses occurring in living quarters. To paragraph (b) FRA adds additional reporting exceptions applicable to Employees on Duty—Class A (paragraphs (b)(2) through (b)(3)). These exceptions do not affect a railroad's obligation to report to FRA Class B—Employee not on duty injuries.

Paragraph (c) contains reporting exceptions applicable to all employees (whether on or off duty). With respect to the reporting exception listed in paragraph (c)(3), FRA wishes to clarify that an injury or illness that is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption is not reportable. It does not matter if the employee bought the food on the employer's premises or brought the food into work. For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. If, however, the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered reportable if the case meets the general reporting criteria set forth at § 225.19(d)(1)–(d)(6).

In paragraph (d), FRA addresses the applicability of the reporting exceptions listed in paragraph (b) and (c) to contractors and volunteers. The reporting exceptions for employee injuries and illnesses apply equally to volunteer injuries and illnesses and to contractor injuries (contractor illnesses are not reportable to FRA). Because an injury to a contractor, or injury to or illness of a volunteer, must occur on property owned, leased or maintained by the railroad (rather than in the work environment), any reference to the term ''work environment'' in paragraph (b) is construed to mean, for the purposes of paragraph (d) only, on property owned, leased, or maintained by the railroad. The application of the exceptions as stated in paragraph (d) does not reflect any change to FRA's provisions, but is included to clarify the applicability of the reporting exceptions to contractors and volunteers. Paragraph (e) addresses reporting exceptions for rail equipment accidents/incidents which are currently included in the FRA Guide.

The agency believes these exceptions should be incorporated into the rule, and that doing so will provide a better understanding of FRA's employee injury and illness reporting requirements. The reporting exceptions do not affect a railroad's obligation to maintain records of accidents/incidents as required by § 225.25 (Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' and Form FRA F 6180.97, ''Initial Rail Equipment Accident/Incident Record''), as applicable.

FRA also proposes to eliminate from the reporting exceptions suicides and attempted suicides. In doing so FRA is proposing that casualties due to suicides and attempted suicides, that meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6), be reported to the agency on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet),'' as a new category of data called ''suicide data.'' Under the proposed system, a fatality to a person due to that person's commission of suicide as determined by a coroner or other public authority; or a reportable injury to a person due to that person's attempt to commit suicide as determined by a public authority, would be reported to FRA regardless of the need for other reporting of the event (*i.e.*, the suicide resulted in a reportable train accident or highway-rail grade crossing collision). These suicide data cases would not be reported to OSHA by FRA. FRA will not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will, however, be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act (FOIA). For additional information FOIA request see FRA's Web site at *http://www.fra.dot.gov/us/foia*. Suicide data counts will be included in casualty counts on Forms FRA F 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report,'' and FRA F 6180.54, ''Rail Equipment Accident/Incident Report,'' in order that number of casualties reported to FRA on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet),'' for the month is consistent with the number of casualties reported to FRA on each of these accident/incident reporting forms. *See* § 225.41, ''Suicide data.'' *See also* Section-by-Section Analysis for § 225.5, ''Definitions,'' and Appendix H, ''Forms,'' for additional information.

FRA believes that it is important to collect data on suicides. Death by suicide is a national problem as indicated by the fact that more than 30,000 Americans die by suicide each year. Currently, there are no reliable reports about how many of these deaths occur on railroad property. The California Public Utilities Commission indicates that more than 55 percent of pedestrian railroad fatalities in California are attributed to suicide, and according to the American Association of Suicidology, railroads that have tracked probable suicides on the rail system report that suicides are responsible for 39 percent of pedestrian fatalities. Additionally, a March 3, 2005, Chicago Tribune article, ''Suicide is Top Cause of Train Track Deaths; State Looks for Ways to Prevent Fatalities,'' indicates that in 2004, there were 30 probable suicide deaths and an additional three attempts involving trains in Chicago alone, and that suicide was the leading cause of rail-related fatalities in Illinois for 2004, which led Illinois to implement a systematic tracking program of such incidents on rail property. This information illustrates the fact that there are a large number of fatalities occurring on railroad property without any national initiative to collect data that might be used to address these events.

Since it appears that suicides contribute significantly to the total number of fatalities that are occurring

on railroad tracks, it is appropriate to report suicides in addition to the other causes of death in the industry. By requiring the information be reported as suicide data, these fatalities will not be included in the normally reported fatality data. These new data may help FRA, organizations promoting safety on and around railroad property, and suicide prevention agencies, assess the problem and develop programs to decrease the incidence of suicides by train.

FRA notes that the collection of suicide data will also aid the Federal Transit Administration (FTA) in its collection and analysis of commuter railroad accidents, since FRA provides certain commuter railroad safety data to FTA. FTA relies on FRA to provide to it data on the types of accidents occurring on commuter rail, their primary causes, and the consequences, in terms of fatalities (which for FTA includes suicides under 49 CFR part 659), injuries and property damage. The data FRA provides to FTA, however, is somewhat incomplete, in that FRA cannot provide suicide data to FTA. Consequently, FTA, which uses this information to better inform their assessments of safety plans and hazard analysis performed by commuter rail grantees applying for FTA grants, must work with an incomplete data set.

In order for FRA to capture suicide data, FRA proposes to require railroads to indicate suicide or attempted suicide on Forms FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)''; FRA F 6180.54, ''Rail Equipment Accident/Incident Report''; and FRA F 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report'' as follows:

(1) *Form FRA F 6180.55a*—FRA proposes to require an ''X'' representative of ''suicide or attempted suicide'' be placed in ''Special Cause Code'' block 5r. FRA also proposes to change the title of block 5m, currently ''Result,'' to ''Tools.'' This change is a correction to the current form and is necessary to maintain consistency with types of Circumstance Codes in Appendix F of the FRA Guide.

(2) *Form FRA F 6180.54*—FRA proposes to add four Miscellaneous Cause Codes for use in block 38 as follows: (i) Code M309 ''Suicide (Highway-Rail Grade Crossing Accident)''; (ii) Code M310 ''Attempted Suicide (Highway-Rail Grade Crossing Accident)''; (iii) Code M509 ''Suicide (Other Misc.)''; and (iv) Code M510 ''Attempted Suicide (Other Misc.)''. These codes would be added to Appendix C, ''Train Accident Cause Codes'' to refer to ''Suicide or Attempted Suicide'' for use in ''Primary Cause Code'' block 38. Railroads would also be required to include suicides and attempted suicides in the casualty counts in blocks 46, 47, and 48, as applicable.

(3) *Form FRA F 6180.57*—FRA proposes to add to block 41, currently titled ''Driver Action,'' (FRA is proposing to change this title to ''Highway User Action,'' for additional information see Changes to FRA Guide, section N, ''*Appendix H, ''Forms*'', subsection 8, ''*FRA Form FRA F 6180.57*'') a selection for ''Suicide or Attempted Suicide.'' Railroads would also be required to include suicides and attempted suicides in the casualty counts in blocks 46, 49, and 52, as applicable. *See* Section-by-Section Analysis for Appendix H, ''Forms'' for additional information.

FRA notes that it is also concerned that suicides are being reported as trespasser fatalities, because railroads do not always make reasonable inquiry in their efforts to determine the cause of death. In fact, FRA has found that a number of reported trespasser fatalities are actually suicides. Accordingly, FRA is revising Chapter 6 of the FRA Guide to clarify that in order to fulfill its responsibilities to maintain accuracy in reporting, a railroad must try to obtain documentation indicating the cause of death by contacting the coroner or other public official by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must continue its efforts to obtain this information for a period of six months following the month in which the fatality occurred. The railroad must keep a record of its efforts to obtain such documentation. This record and any documentation obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b).

Section 225.17 Doubtful Cases

In this section, FRA proposes to revise part 225 by redesignating the ''Alcohol or Drug Involvement'' provisions currently contained in this paragraph (d) to a newly added § 225.18. FRA has often observed that the inclusion of the two unrelated topics in one section has led to confusion among interested parties. The move is, therefore, intended to reduce possible confusion and does not pose any substantive change to FRA's current accident/incident reporting requirements. FRA also proposes a technical amendment to the first sentence of paragraph (a) by inserting the word ''of,'' which was inadvertently omitted, between the words ''officer'' and ''a railroad'' revising the sentence to read: ''The reporting officer of a railroad * * *.''

Section 225.18 Alcohol or Drug Involvement

As stated above, FRA proposes to add a new section, § 228.18, and redesignate the Alcohol and Drug provisions currently contained in § 225.17(d) to a new section, § 225.18, for clarity purposes only. FRA does propose technical amendments to proposed paragraph § 225.18(b) (currently § 225.17(d)(2)) changing the word ''title'' to ''chapter'' to reference the correct term and inserting ''49 CFR'' in front of the reference to § 219.209 for clarity. FRA also proposes to amend § 225.18(d) (currently § 225.17(d)(4)) by changing the word ''paragraph'' to ''section'' to accommodate the proposed redesigation of § 225.17(d) to § 225.18(a)–(d).

Section 225.19 Primary Groups of Accidents/Incidents

In this section, FRA proposes to revise paragraph (d) to clarify the agency's existing reporting requirements for death, injury and occupational illness and to further conform those requirements to OSHA's recordkeeping and reporting regulations.

FRA's accident/incident reporting regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. *See* Section-by-Section Analysis for § 225.5, ''Definitions'' with respect to ''Discernable cause.'' Moreover, maintaining such compatibility allows railroads to report occupational casualties only to FRA rather than to OSHA and to FRA. *See* 29 CFR 1904.3.

With respect to employee injury and illness recording, OSHA's regulations requires that ''each employer * * * must record each fatality, injury and illness that is work-related; and is a new case; and meets one or more of the general recording criteria * * * or the application to specific cases.'' 29 CFR 1904.4(a).

By rewording paragraph (d) to more closely model OSHA's wording, FRA is better conforming its reporting requirements to that of OSHA. FRA is also clarifying that only new cases are reportable. The current regulation requires that the injury or illness must

be a new case *or* a significant aggravation of a pre-existing injury or illness. FRA therefore proposes, that to be reportable, a significant aggravation of a pre-existing case must be a ''new case'' (i.e., a case in which either the employee has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the employee previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear).

FRA also proposes to amend paragraph (d) by revising the general reporting criteria, specifically paragraph (d)(2), which currently states, ''injury to any person that results in medical treatment,'' to include ''significant injury to any person'' and ''loss of consciousness to any person.'' Failure to include these classes of injuries as reportable for ''any person'' rather than just railroad employees in the general criteria in the agency's 2003 Final Rule (68 FR 10107, March 3, 2003), has resulted in FRA not capturing data for non-employees with respect to significant injuries.

In addition, FRA proposes to amend paragraph (d)(6)(v) to remove the word ''independently'' for purposes of clarity. As explained in the Section-by-Section Analysis the § 225.5 definition of ''Injury or Illness,'' MSD's are injuries and illnesses under the rule and are subject to the same recording criteria that apply to other injuries and illnesses.

Lastly, FRA proposes to amend paragraph (d)(6) to include covered data cases. The addition of covered data cases to § 225.19(d) is a technical amendment and intended to correct the inadvertent omission of the criteria in the current rule text. The addition does not alter FRA's reporting criteria or its policy on covered data as stated in § 225.39.

Section 225.21 Forms

In this section, FRA proposes to amend paragraph (j) in relation to the use of Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related.'' Specifically, FRA is proposing to make use of the Form FRA F 6180.107, in place of Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' optional rather than mandatory, and to amend and redesignate the instructions for use of the form currently set forth at § 225.21(j) to § 225.25(i) under the section entitled ''Recordkeeping.'' *See* Section-by-Section Analysis for § 225.25, ''Recordkeeping,'' for additional information.

Section 225.25 Recordkeeping

In this section, FRA proposes to eliminate from paragraph (a) the words ''that arise from the operation of the railroad'' in order to maintain continuity with the agency's proposed definition of ''accountable injury or illness.'' *See* Section-by-Section Analysis for § 225.5, ''Definitions,'' for additional information. Moreover, such language is redundant with respect to reportability, as § 225.19(d) clearly indicates an injury or illness is only reportable if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness.

FRA also proposes to revise the criteria for using Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related'' and sets forth all of the information that must be included in an alternative railroad-designed record that may be used in lieu of the Form FRA F 6180.107.

Prior to FRA's most recent amendments to part 225 in 2003, FRA required all accountable and reportable injuries and illnesses be recorded on Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' or an equivalent record containing the same information. The subset of those cases that qualified for reporting were then reported to FRA on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet).'' If the case was not reported, the railroad was required to state, on Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' or the equivalent record, the reason the injury or illness was not reportable. According to the final rule preamble, 68 FR 10107, 10118, March 3, 2003:

> [a]lthough this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.
>
> With respect to accounting and reportability under part 225, railroad representatives asserted their concern that mere allegations (e.g., receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They added that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad viewed the claim of work-relatedness as valid.
>
> Although sympathetic to these concerns, FRA was disappointed in the quality of data provided in the past related to occupational illness. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made.

As a result, FRA established at § 225.25(i)(1) a separate category of claimed illnesses to be recorded on a new form, Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work Related.'' This category is comprised of: Illnesses for which there is insufficient information to determine whether the illness is work-related; illness for which the railroad has made a preliminary determination that the illness was not work-related; and illnesses for which the railroad has made a final determination that the illness is not work-related.

For any case determined to be reportable, under § 225.25(i)(2) the railroad has been required to remove the designation ''illness claimed to be work-related'' and transfer the record to the reporting officer for retention and reporting in the normal manner. In the event the railroad determined the case was not reportable, § 225.25(i)(3) requires that the railroad record an explanation in ''narrative'' block 19 of Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related,'' of the reason(s) the railroad made that determination, making reference to the ''most authoritative'' information relied upon.

FRA believed that this system of accounting for contested illnesses would focus responsibility for reporting decisions and provide an appropriate audit trail. In addition, FRA thought that it would result in a body of information that could be used for research into the causes of prevalent illnesses, particularly in the case of musculoskeletal disorders. *See* 68 FR 10107, 10118, March 3, 2003. Unfortunately, this has not been the case.

Rather than use the Form FRA F 6180.107, ''Alternative Record for

Illnesses Claimed to be Work-Related,'' to record only those illnesses for which the railroad: has insufficient information to determine whether the illness is work-related; has made a preliminary determination that the illness is not work-related; or has made a final determination that the illness is not work-related, FRA found that frequently railroads are recording all occupational illnesses on Form FRA F 6180.107 as a matter of practice even before evaluating the sufficiency of information provided and/or work-relatedness, and that railroads allowed these records to remain unevaluated for periods of several months or more without being updated or reviewed for work-relatedness. Moreover, FRA has found that railroads are not creating the Form FRA F 6180.107 record no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness, as required by the FRA Guide. Consequently, this system of accounting has not focused responsibility for reporting decisions, not provided an appropriate audit trail, not resulted in a body of information that can be used in the future for research into the causes of prevalent illnesses, and has not been helpful in correcting the under-reporting of occupational illnesses to FRA.

In order to correct this problem, FRA proposes to refine the circumstances and procedures related to the recording of claimed occupational illnesses on Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related.'' Specifically, FRA proposes to allow the use of the Form FRA F 6180.107 to record only those claimed occupational illnesses for which the railroad carrier has not received, from the employee or their representative, information sufficient to determine whether the occupational illness is work-related. FRA's proposal also includes, among other things, requirements that railroads: enter each illness claimed to be work-related on the record no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness; make a good faith effort to obtain information necessary on occupational illness cases to make a reporting decision by December 1 of the next calendar year; document the receipt of new or additional case information in ''narrative'' block 19 of Form FRA F 6180.107 within seven days of receipt and to re-evaluate the case in light of the new information within 30 days of receipt of the information; complete a Form FRA F 6180.98 for any claimed occupational illness case determined to be accountable or reportable within seven days of making such determination; to retain the record in accordance with the provisions set forth in § 225.27 and report the illness in accordance with regular reporting requirements; and provide complete narratives on Form FRA F 6180.107 for those cases the railroad determines are not reportable. The proposal also specifically defines what data elements an alterative railroad-designed Form FRA F 6180.107 must contain.

FRA proposes to amend the requirement at paragraph § 225.25(b)(6) so that the alternative railroad-designed record for Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' require the input of the ''Employee identification number'' only, to eliminate for privacy reasons the employee social security number option. FRA is proposing a like requirement for the alternative railroad-designed record for Form FRA F 6180.107, ''Alternative Records for Illnesses Claimed to be Work-Related.'' FRA is also proposing corresponding changes for Forms FRA F 6180.98 and 6180.107. *See* Section-by-Section Analysis for Appendix H, ''Forms.''

FRA also proposes to replace the term ''log entry'' at § 225.25(b)(28) with ''record'' and ''report'' at § 225.25(e)(28) with ''record.'' Both of these sections refer to ''records,'' specifically alternative railroad-designed Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' and alternative railroad-designed Form FRA F 6180.97, ''Initial Rail Equipment Accident/Incident Record,'' respectively. This amendment is merely technical and is not intended by the agency to affect any substantive change.

FRA also proposes to amend the requirements for these alternative railroad-designed records by amending §§ 225.25(b)(28) and (e)(28), and proposed (j)(25), respectively, to reflect that the date required is the initial date the form was signed/completed. FRA finds it necessary to make such change because certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. Consequently, FRA is unable to discern if the railroad entered each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by § 225.25(a) through (e), no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required by § 225.25(f). FRA believes that specifying the date which is required to be maintained on the record will resolve any confusion regarding the requirement. FRA is proposing a like requirement for the alternative railroad-designed Form FRA 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related.'' FRA is proposing corresponding changes for Forms FRA F 6180.98, 6180.97 and 6180.107. *See* Section-by-Section Analysis for Appendix H, ''Forms.''

Section 225.27 Retention of Records

In this section, FRA proposes a five-year record retention requirement for Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related.'' FRA does so because the current rule does not set forth a retention period for these forms. Five years is the same retention period as that of Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' and appropriate for accurate recordkeeping and auditing purposes. FRA also proposes a requirement that in the event a railroad opts to submit their monthly Form FRA F 6180.55, ''Railroad Injury and Illness Summary'' via optical media or electronically via the Internet, rather than in hard copy, the railroad retain the original completed hard copy for a period of five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA via the Internet, FRA proposes to require that the railroad also retain a hard copy printout of FRA's electronic notice acknowledging receipt of the submission for a period of five years after the calendar year to which the report acknowledged relates. FRA proposes these requirements in light of the new electronic submission options proposed in § 225.37, ''Magnetic media transfer and electronic submission'' of this notice.

Lastly, FRA proposes system standards for the electronic retention, by railroads, of accident/incident records. Historically, railroads have retained these records in hard copy form. FRA, however, is not opposed to railroads maintaining these records electronically so long as the integrity of the record is maintained. In order to ensure such integrity, FRA is proposing minimum system requirements for electronic retention of accident/incident records.

Section 225.33 Internal Control Plan

In this section, FRA proposes to clarify current ambiguity of element number 11 of the internal control plan

to allow railroads to have multiple named custodians and locations of completed Forms FRA F 6180.107, ''Alternative Records for Illnesses Claimed to be Work-Related,'' or the alternate railroad-designed forms and supporting documentation. FRA recognizes that railroads do not necessarily keep completed Claimed Occupational Illness Records in a centralized location, and that different individuals may be responsible for keeping the records. By amending the regulation, railroads will be able to accurately indicate who the custodians are and where the custodians and records are located.

Section 225.37 Magnetic Media Transfer and Electronic Submission

FRA is updating the title of this section to reflect changes in technology. It will read, ''Optical media transfer and electronic submission.'' FRA also is instituting two changes related to Form FRA F 6180.55, ''Railroad Injury and Illness Summary.'' FRA believes that both of these changes will reduce railroad burdens related to completing and submitting this form.

FRA has replaced the oath and notarization requirement for Form FRA F 6180.55, ''Railroad Injury and Illness Summary,'' with a requirement that the signature be signed under penalty of perjury in accordance with 28 U.S.C. 1746.

Title 49 U.S.C. 20901 requires that a railroad file an Accident/Incident report ''under oath'' no later than 30 days after the end of each month. To fulfill this requirement, FRA currently requires that a railroad reporting officer make a sworn statement, under oath, before a notary public each month attesting to the accuracy that month's submission. The question has arisen as to whether an unsworn, unnotarized statement is adequate to fulfill the section 20901 oath requirement.

In 1976, Congress addressed the use of ''unsworn declarations under penalty of perjury,'' in lieu of a sworn affidavit. Title 28 U.S.C. 1746, ''Unsworn Declarations Under Penalty of Perjury,'' provides that ''wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated * * *'' and provides examples of the form the declaration, certificate, verification, or statement must take. Consequently, the oath requirement of 20901 can be met via an unsworn, unnotarized statement, so long as the statement meets the requirements set forth in 28 U.S.C. 1746.

FRA is also updating the regulatory text to include provisions allowing railroads to make their monthly reporting submissions (Forms FRA F 6180.54, ''Rail Equipment Accident/Incident Report''; 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)''; 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report'') to FRA via optical media (CD–ROM) or electronically via the Internet. Batch control forms (Form FRA F 6180.99) are no longer required for submission. Form FRA F 6180.55, ''Railroad Injury and Illness Summary,'' reports and Form FRA F 6180.81 ''Employee Human Factor Attachment'' reports; may also be submitted through these means, however the Form FRA F 6180.55 must submitted as an image of the completed and signed hard copy and must be in .pdf or .jpg file format only; and the Form FRA F 6180.81 must also be in .pdf or .jpg file format. If a railroad opts to submit their completed Form FRA F 6180.55 to FRA via optical media or electronically via the Internet, the railroad must maintain the original completed and signed Form FRA F 6180.55 for at least five years after the calendar year to which the report relates in accordance with proposed § 225.27(c). FRA will provide to the railroad an electronic notice acknowledging the agency's receipt Form FRA F 6180.55 reports which are filed electronically via the Internet. The railroad must also maintain a hard copy print out this acknowledgment notice for at least five years after the calendar year to which the report acknowledged relates in accordance with proposed § 225.27(c).

FRA is also proposing to add a paragraph (f) a statement requiring that railroads choosing to use the optical medical or electronic submission via Internet option must use one of the approved formats specified in the Companion Guide. FRA will reject submissions that do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing to provide timely submissions of required reports as required by § 225.11.

Section 225.41 Suicide Data

In this section, FRA proposes to add § 225.41 ''Suicide Data,'' to detail FRA's intended use of suicide data. *See* Section-by-Section Analysis for § 225.15, ''Accidents/Incidents Not To Be Reported'' for additional information.

Appendix A to Part 225—Schedule of Civil Penalties

Appendix A to part 225 contains a schedule of civil penalties for use in connection with this part. FRA may revise the schedule of civil penalties in issuing the final rule to reflect revision made to part 225. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

FRA notes that in December 2006, it published proposed statements of agency policy that would amend the 25 schedules of civil penalties issued as appendixes to FRA's safety regulations, including part 225. *See* 71 FR 70589, Dec. 5, 2006. The proposed revisions are intended to reflect more accurately the safety risks associated with violations of the rail safety laws and regulations, as well as to make sure that the civil penalty amounts are consistent across all safety regulations. Although the schedules are statements of agency policy, and FRA has authority to issue revisions without having to follow the notice and comment procedures of the Administrative Procedure Act, FRA has provided members and representatives of the general public an opportunity to comment on the proposed revisions before amending them. FRA is currently evaluating all of the comments received in preparing final statements of agency policy, and the schedule of civil penalties to part 225 may be revised as a result, independent of the rulemaking proceeding.

Proposed Revisions to the FRA Guide

Generally, FRA proposes to make the following changes to the FRA Guide: Improve the table of contents; add a subject index; reorganize chapter contents for ease of use; include

necessary updates; include new ''Questions and Answers'' and ''Scenarios'' taken from the FRA Safety Data Web page (*http://safetydata.fra.dot.gov/officeofsafety*) and from OSHA's Web page (*http://www.osha.gov/comp-links.html*) to clarify reporting issues; and to eliminate redundant language by replacing verbatim reiterations of part 225 rule text where appropriate and instead, cite references to part 225 (for ease of reference FRA proposes to include the full regulatory text of part 225 in a newly created appendix K of the FRA Guide). More specific changes include:

A. *Chapter 1, ''Overview of Accident/Incident Reporting and Recordkeeping Requirements.''* FRA proposes to revise the paragraph titled, ''Telephonic Reports of Certain Accidents/Incidents'' in accordance with this amendments set forth in § 225.9 of this proposal, and to include the telephonic reporting requirements set forth in 49 CFR parts 229, ''Railroad Locomotive Safety Standards''; part 233, ''Signal Systems Reporting Requirements''; part 234, ''Grade Crossing Signal System Safety''; and part 219, ''Control of Alcohol and Drug Use.'' Such incorporation is for informational purposes only, and places no new reporting requirements on railroads. By including these requirements in the guide, FRA hopes to better disseminate its telephonic reporting requirements, and improve railroad compliance by providing a single reference location for determining when accident/incident telephonic notification is required.

FRA also proposes to amend the section entitled ''Close of Calendar Year'' by clarifying the requirements for submitting late and amended reports, revising the time frame in which FRA will accept additional late and amended accident/incident reports, and changing from optional to mandatory the filing of amended reports for certain accidents/incidents.

FRA publishes final accident/incident counts following the conclusion of a reporting year. Submission of the December report concludes the reporting year. However, railroads are still required to provide to FRA late reports of unreported accidents/incidents and amended reports that correct or update earlier submissions.

Currently, the FRA Guide (Chapter 1—Page 12 through 13) specifies three cutoff dates for filing late and amended accident/incident reports following the completion of the reporting year:

(1) April 15 of the of the next calendar year;

(2) December 1 of the following year: and

(3) Five years after the end of the calendar year to which the accident/incident report relates.

FRA has found this reporting scheme to be confusing and outdated with the advent of improved technology. Moreover, improvements in database management strategies allow for contemporaneous viewing of reporting accident/incident statistics and have eliminated the need to impose artificial deadlines for keeping files open or for FRA to publish interim reports. As such, FRA proposes to remove references to the cutoff date of April 15th of the next calendar year for accepting late reports and amendments. Accordingly, FRA will receive and process any and all late and amended reports for a period of five years following the calendar year to which an amended or late report relates. This accommodation does not relieve a railroad of its obligation to promptly file a late or amended report upon becoming aware of an omission, mistake or otherwise, in accordance with § 225.13 and the late and amended reporting guidance set forth in this Guide. FRA will continue to publish its Annual Report of Railroad Safety Statistics. Because the accident/incident databases will remain open for updating for a period of five years, the statistics published in the Annual Report will be subject to change. The authoritative source for rail safety statistics will now be the Office of Safety's Web site: *http://safetydata.fra.dot.gov/OfficeofSafety*.

To clarify, FRA does not propose to change the following late and amended reporting requirements which are currently set forth in the FRA Guide:

(1) Railroads must file amended reports with FRA through December 1 of the year following the year in which the accident/incident was initially reported.

(2) Railroads must file late reports with FRA for five years (following the end of the calendar year to which the accident/incident relates) for all unreported accident/incidents.

FRA does, however, propose to change its reporting requirements with respect to certain specified accidents/incidents. Currently, the FRA Guide states that railroads ''should'' continue to file amended reports after December 1 of the following year (*i.e.*, for five years after the end of the calendar year to which they relate) for the changes listed below. FRA proposes to make such amended reporting mandatory. Accordingly, FRA proposes that railroads shall continue to file amended reports for five years after the end of the calendar year to which they relate for the following changes:

(1) Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a): Change from Injury to Fatality (only if the injured person dies within 180 days from the date of the injury);

(2) Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57): Change from Injury to Fatality, change in Grade Crossing ID, change in the Rail Equipment Involved;

(3) Rail Equipment Accident/Incident Report (Form FRA F 6180.54): Change from Injury to Fatality, change in Grade Crossing ID, Rail Equipment Involved, Primary Cause Code, Contributing Cause Code, Type of Territory, Number of Cars Releasing or Evacuation.

FRA further proposes that railroads shall continue to file amended reports for five years after the end of the calendar year to which they relate for the additional changes listed below:

(1) Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a): A significant change in the number of reportable days away from work or days restricted; a significant change is at least a 10% variance in the number of actual reportable days away from work or days restricted compared to the number of days already reported.

(2) Railroad Equipment Accident/Incident Report (Form FRA F 6180.54): A significant change in the damage costs for reportable rail equipment accidents/incidents; a significant change is a 10% variance between the damage amount reported to FRA and the current cost figures.

B. *Chapter 2, ''Definitions.''* FRA proposes to revise or add certain definitions for clarification or ease of reference and to remove definitions that are simply reiterations of definitions set forth in § 225.5. FRA proposes to add definitions for ''Barricaded Crossing'' to mean ''a highway-rail grade crossing that is temporarily closed to highway users''; and ''Closed Crossing'' to mean a location where a crossing has been physically removed or where rail operations or highway traffic is not possible. This does not include crossings that are temporarily closed for repairs to the track structure, crossing surface, or roadway approaches. Examples are locations where the crossing has been barricaded and highway crossing surface material removed; where the railroad tracks have been cut or barricaded or physically removed; where a connecting turnout has been removed; or where rail operations are not possible because the railroad tracks are paved over, etc. Crossings along such inactive railroad lines are closed. FRA adds these

definitions to the FRA Guide to eliminate confusion about the meaning of a ''closed'' versus ''barricaded'' crossing and to revise the definition of ''closed crossing'' to agree with the definition used in the Grade Crossing Inventory System (GCIS). The GCIS is a voluntary system used by states, railroads and the Federal government to profile crossings and determine which crossings need improved warning systems for highway users. The FRA and other users regularly compare information from the Highway-Rail Crossing Accident/Incident Reports (Form FRA F 6180.57) to the GCIS. Clearly defining ''closed crossing'' and ''barricaded crossing,'' and making the GCIS and FRA definitions consistent will reduce confusion and aid in grade crossing accident/incident reporting accuracy.

FRA proposes to add a definition for ''Gap'' to mean, ''the horizontal space between the edge of the passenger boarding platform and the edge of the rail car door threshold plate, and the vertical difference from the top of the passenger boarding platform and the top of the rail car threshold.'' This definition with minor variation was recommended by the RSAC General Passenger Safety (GPS) Task Force reported to the full RSAC on October 25, 2007, along with the Cause Code Recommendations for platform gap related injuries (see discussion for Appendix F of the FRA Guide). The full RSAC agreed to the recommendations on October 25, 2007.

FRA proposes to add a definition for ''Gap Incident'' to mean, ''an event involving a person who, while involved in the process of boarding or alighting a passenger train at a rail car door threshold plate at a high level passenger boarding platform (*i.e.*, a platform that is 48'' or more above the top of the rail), has one or more body parts enter the area between the car body and the edge of the platform. The following are examples of a Gap Incident:

—While boarding or alighting a passenger train at a high level passenger boarding platform a person misjudges the gap, resulting in the person's leg entering the gap.

—While boarding or alighting a passenger train at a high level passenger boarding platform, a person is struck by a closing door, resulting in the person's leg entering the gap.

The following are not examples of a Gap Incident:

—While boarding or alighting a passenger train at a high level passenger boarding platform, a person misjudges the gap and falls into the vestibule or platform, without a body part entering the gap.

—While walking on a passenger station at a high level passenger boarding platform, a person slips on the platform, at a location other than the rail car door threshold, resulting in the person's leg entering the gap.

The definition and examples of ''Gap Incident'' was recommended by the RSAC General Passenger Safety (GPS) Task Force reported to the full RSAC on October 25, 2007, along with Cause Code Recommendations for platform gap related injuries (see discussion for Appendix F of the FRA Guide). The full RSAC agreed to these recommendations on October 25, 2007. FRA has adopted these recommendations with slight variation. See section on Changes to the FRA Guide, discussion of Appendix F.

FRA proposes to amend the definition of ''locomotive'' to support changes necessary to include EMU and DMU cars on FRA Form F 6180.54, ''Rail-Equipment Accident/Incident Report.'' In the current FRA Guide (May 1, 2003), a cab car is defined as a locomotive; there is no definition for EMU and DMU cars, which created confusion because these cars provide power to the consist can therefore also be classified as locomotives.

FRA proposes to add a definition for ''vehicle'' to include automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation, motorized and unmotorized.

C. *Chapter 3, Form FRA F 6180.55, ''Railroad Injury and Illness Summary.''* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. *See* Section-by-Section Analysis for § 225.27, ''Retention of records'' § 225.37, ''Magnetic media transfer and submission,'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

D. *Chapter 4, Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record.''* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. *See* Section-by-Section Analysis for § 225.5, ''Definitions'' definition for Accountable Injury or Illness; § 225.25, ''Recordkeeping'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

E. *Chapter 5, Form FRA F 6180.97, ''Initial Rail Equipment Accident/ Incident Record.''* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. *See* Section-by-Section Analysis for § 225.25, ''Recordkeeping'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

F. *Chapter 6, Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet).''* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. FRA also proposes to add instructions that if an injury is due to a gap incident, the railroad must use in block 5n (''Cause''), ''Probable Reason for Injury/Illness Circumstance Codes'' code number 18—Slipped, fell, stumbled due to Gap, regardless of whether other codes may also be applicable. *See* Section-by-Section Analysis for §§ 225.5, ''Definitions''; § 225.15, ''Accidents/ Incident not to be reported''; § 225.19 ''Primary Groups of Accidents/ Incidents''and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

FRA also proposes to revise Chapter 6 to instruct railroads that they must presume that a highway user who is involved in a highway-rail grade crossing accident/incident and is transported from the scene of a highway-rail grade crossing accident/ incident to a medical facility via ambulance or other form of medical conveyance, did, more likely than not, sustain an FRA reportable injury (i.e., an injury meeting the general reporting criteria set forth at § 225.19(d)(1) through (d)(6)). Absent evidence to rebut the presumption, the railroad must report the injury to FRA on Form FRA F 6180.55a, and include the casualty on Form FRA F 6180.57. If the railroad later discovers that the highway user did not sustain a reportable injury, the railroad must notify FRA in accordance with the late reporting instructions set forth at § 225.13. FRA is proposing this change because the agency has found that railroads are under-reporting highway-rail grade crossing accidents/incidents related to injuries to persons other than railroad employees due to the railroads' limited access to injured highway users' medical records, especially in light of privacy protections related to health information provided by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191.

FRA emphasizes, however, that this presumption does not relieve railroads of their duty to make reasonable inquiry to determine the nature and severity of highway-rail grade crossing injuries and to accurately report such injuries. FRA has found that railroads often do not make such reasonable inquiry.

Accordingly, FRA is clarifying that in order to fulfill its responsibilities in determining the nature and severity of highway-rail grade crossing injuries and to accurately report such injuries, a railroad must try to contact the injured individual or their representative by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must keep a record of its efforts to make such contact. This record and documentation of any information obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35 (b).

Lastly, FRA is concerned that fatalities that are actually suicides are being reported as trespasser fatalities. Often this occurs because railroads do not always make reasonable inquiry in their efforts to determine the cause of death. In fact, FRA has found that a number of reported trespasser fatalities are actually suicides. Accordingly, FRA is revising Chapter 6 to clarify that in order to fulfill its responsibilities in determining the nature of a trespasser fatality and to accurately report such fatality, a railroad must try to obtain documentation indicating the cause of death by contacting the coroner or other public official by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must continue its efforts to obtain this documentation for a period of six months following the month in which the fatality occurred. The railroad must keep a record of its efforts to obtain such documentation. This record and any documentation obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35 (b).

G. *Chapter 7, pertaining to Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report.''* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. FRA also proposes to add instructions to Chapter 7 requiring that if an accident is caused by a bond wire attachment issue (*see* proposed Appendix C ''Train Accident Cause Codes''), information on the methods and locations of those attachments be provided in the narrative block 52. *See* Section-by-Section Analysis for §§ 225.5, ''Definitions''; § 225.15, ''Accidents/Incident not to be reported''; § 225.19 ''Primary Groups of Accidents/Incidents''and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information. *See* Section-by-Section Analysis for § 225.5, ''Definitions,'' § 225.15, ''Accidents/Incident not to be reported'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

H. *Chapter 10, pertaining to Form FRA F 6180.57, ''Highway-Rail Grade Crossing Accident/Incident Report.''* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. *See* Section-by-Section Analysis for § 225.15, ''Accidents/Incident not to be reported'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

FRA also proposes to revise Chapter 10 to instruct railroads that they must presume that a highway user who is involved in a highway-rail grade crossing accident/incident and is transported from the scene of a highway-rail grade crossing accident/incident to a medical facility via ambulance or other form of medical conveyance, did, more likely than not, sustain an FRA reportable injury (i.e., an injury meeting the general reporting criteria set forth at § 225.19(d)(1) through (d)(6)). Absent evidence to rebut the presumption, the railroad must report the injury to FRA on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)'' and include the casualty on Form FRA F 6180.57. In order to fulfill its responsibilities in determining the nature and severity of a highway-rail grade crossing injury and to accurately report such injury, a railroad must try to contact the injured individual or their representative by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must keep a record of its efforts to make such contact. This record and documentation of any information obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b). For additional information see Section-by-Section Analysis for § 225.15 ''Accidents/Incidents not to be reported'' and Proposed Revisions to the FRA Guide, Subsection F, Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet).''

I. *Chapter 13, pertaining to Form FRA F 6180.107, ''Alternative Record for Illness Claimed to be Work-Related.''* FRA proposes to revise the instructions for the use of the form consistent with the changes proposed in this NPRM. *See* Section-by-Section Analysis for § 225.21, ''Forms,'' § 225.25, ''Recordkeeping,'' § 225.27 ''Record Retention,'' § 225.33, ''Internal Control Plan'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

J. *Appendix A, ''Railroad Codes.''* FRA proposes to provide updates to the railroad codes.

K. *Appendix C, ''Train Accident Cause Codes.''* FRA proposes to add or revise the following Train Accident Cause Codes:

- T224 ''Rail defect originating from bond wire attachment.'' FRA proposes to add Train Accident Cause Code T224 response to the National Transportation Safety Board's (NTSB) 2005 recommendation that FRA provide a train accident cause code for derailments caused by bond wire attachments. This recommendation arose from the NTSB's investigation of the derailment of northbound National Railroad Passenger Corporation (Amtrak) train No. 58 while operating on Canadian National (CN) track near Flora, Mississippi, on April 6, 2004. The derailment resulted in one fatality, 35 injuries (that were reportable to FRA), and damage costs of approximately $7 million. The NTSB recommended that FRA include in the FRA Guide a train accident cause code for derailments caused by rail cracks originating from bond wire attachments, and that information on the methods and locations of those attachments be provided in the narrative section of the accident/incident report ((NTSB Recommendation Number RAR–05/02);
- S104 ''Radio controlled switch not locked effectively.'' FRA proposes to amend Train Accident Cause Code S104 by adding ''(equipment failure)'' to the code's description. The description of Cause Code S104 as amended would read, ''Radio controlled switch not locked effectively (equipment failure).'' FRA incorporated this change in order to clarify that S104 pertains to equipment failure, not human error.
- H707 ''Radio controlled switch not locked effectively.'' FRA proposes to amend Train Accident Cause Code H707 by adding ''(human error)'' to the code's description. The proposed description for Cause Code H707 denotes ''Radio controlled switch not locked effectively (human error).'' FRA incorporated this change in order to clarify that H707 pertains to human error, not equipment failure.
- M 309 ''Grade Crossing Suicide''; M310 ''Grade Crossing Attempted Suicide''; M509 ''Suicide Resulting in Train Accident''; and M510 ''Attempted Suicide Resulting in

Train Accident'' for use in block 38 of Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report.'' *See* Section-by-Section Analysis for § 225.15, ''Accidents/incidents not to be reported'' and Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

L. *Appendix F, ''Circumstance Codes.''* FRA added the following ''Probable Reason for Injury/Illness Circumstance Codes,'' (Probable Reason Circumstance Code) under the subtitle ''Remotely controlled locomotive(s) environment'' to the Remote Control Locomotive Switching Operations Fatality Analysis Codes (RCL SOFA Codes) to the May 1, 2003, guide as amended:

- R1 Object fouling track, related to using RCL.
- R2 Outside caused (e.g., assaulted/attacked), related to using RCL.
- R3 Lack of communication, related to using RCL.
- R4 Slack adjustment during switching operation, related to using RCL.
- R5 Insufficient training, related to using RCL.
- R6 Failure to provide adequate space between equipment during switching operation, related to using RCL.
- R7 Close or no clearance, related to using RCL.
- R8 Act of God, related to using RCL.
- U1 Object fouling track, unrelated to using RCL.
- U2 Outside caused (e.g., assaulted/attacked), unrelated to using RCL.
- U3 Lack of communication, unrelated to using RCL.
- U4 Slack adjustment during switching operation, unrelated to using RCL.
- U5 Insufficient training, unrelated to using RCL.
- U6 Failure to provide adequate space between equipment during switching operations unrelated to using RCL.
- U7 Close or no clearance, unrelated to using RCL.
- U8 Act of God, unrelated to using RCL.

In the final regulation to 49 CFR part 225, 68 FR 10107, March 3, 2003, new codes and form changes were made to accommodate the recording events when remote control locomotive operations (RCL) were involved.

A special task group of railroad safety officers representing labor and industry and FRA members was created in the RSAC Accident/Incident Working Group to discuss the coding of RCL. The results of the special task group would be presented to the entire working group for approval. The concern of the reporting officers was to prevent any major changes to the then current forms or databases. In part, this rested on their information technology offices' internal charges for making major programming changes. The FRA team was tasked with finding a way to include RCL involved accidents and incidents on the following three forms: Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report''; Form FRA F 6180.57, ''Highway-Rail Crossing Accident/Incident Report''; and Form FRA F 6180.55a, ''Railroad Injury/Illness Summary (Continuation Sheet),'' without changing the database structures.

The FRA found a way to capture RCL-related incidents on both the Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report,'' and Form FRA F 6180.57, ''Highway-Rail Crossing Accident/Incident Report'' without expanding the database or making a major change on the form or the respective database. Capturing this information on Form FRA F 6180.55a, ''Railroad Injury and Illness (Continuation Sheet),'' remained problematic due to the small number of data fields and limited amount of data collected for each reportable event. FRA developed a solution by expanding the number of Probable Causes in the Circumstance Codes. The method chosen by FRA, and accepted by the RSAC Working Group, was to take each code for Probable Reason Circumstance Codes and create two additional codes, one for RCL-related to the event and another for RCL involved but unrelated to the event. Therefore, the probable reason of ''Equipment,'' code 04 had two additional codes: ''Equipment, related to using RCL,'' code 24, and ''Equipment, unrelated to using RCL,'' code 44. This technique, although clumsy, satisfied railroad safety reporting officers, rail labor officials, and the FRA.

Codes 21 through 59 in Probable Reason for the ''Remotely Controlled Locomotive(s) Environment'' was approved by the full RSAC Working Group for Accident/Incident Reporting. At a later RSAC Working Group Meeting in New Orleans, LA, a new discussion started about the Probable Reason Circumstance Codes. This discussion centered on Switching Operations Fatality Analysis (SOFA). SOFA events were claiming 40 to 50 percent of all fatalities of railroad workers. The Working Group decided to include new codes to insure that fatal and non-fatal SOFA events were culled from other injuries. A small task group was formed, and worked one evening to develop the eight new codes. The full Working Group approved these SOFA codes the next day. However, there was an oversight by the Working Group in the process. There should have been two additional sets of codes for SOFA RCL events (related to RCL and unrelated to RCL). This oversight was not discovered until October 2003, well after the publication and effective date of the revised regulation.

All of the parties to the Full Working Group agreed that any omission in capturing SOFA related injuries was a serious problem. FRA developed 16 additional codes to correspond to the previous eight codes. The new codes R1 through R8 and U1 through U8 were promulgated in December 2003, and were subsequently added to the FRA Guide to remedy the immediate concern. While the initial publication of these SOFA codes was not subject to a notice and comment period, FRA invites comments on the addition of these SOFA codes in this NPRM.

FRA is also proposing to add new Circumstance Codes to Appendix F of the FRA Guide for use on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet),'' to better identify injuries that occur in or due to platform gaps. FRA believes that the collection of this information will allow the agency to assess the magnitude of these types of injuries, identify locations where platform gap related injuries frequently occur, and ultimately aid FRA in efforts to reduce such injuries.

The RSAC General Passenger Safety (GPS) Task Force reported to the full RSAC on October 25, 2007, its Cause Code Recommendations for platform gap related injuries as follows:

(1) To the ''Physical Act Circumstance Codes'' add codes for:

- Passenger Train-Boarding.
- Passenger Train-Alighting.

Also revise the ''Physical Act Circumstance Codes'' to clarify that codes 63 (stepping up) and 64 (stepping over) are to be used for boarding/alighting at high level platforms.

(2) To Part III of the ''Location Circumstance Codes'' add codes for:

- Rail Car Door Threshold Plate to Edge of Platform Gap.
- Area Between Coupled Cars and Platform.
- Area Along Car body, other than Threshold Plate and Platform Edge.
- Car in Vestibule.
- On Platform—Other.

Also change Location Circumstance Code C2—''On Platform'' to ''On Platform Station.''

(3) To the ''Event Circumstance Codes'' add a code for:

• Slipped, fell, stumbled due to Gap.

(4) To Part I of the ''Location Circumstance Codes'' add a code for:

• Other than Platform.

Also change the Location Circumstance Code ''P–Passenger Terminal'' to ''P–Passenger Station on Platform.''

(5) To the ''Tools, Machinery, Appliances, Structures, Surfaces, (etc.) Circumstance Codes'' add codes for:

• Door, End or Side—Passenger Train.

• Door, Trap.

The full RSAC agreed to these recommendations on October 25, 2007.

Subsequently, FRA's Safety Knowledge Management Division's (SKMD) database experts reviewed the RSAC approved coding scheme in an effort to prevent redundant codes, develop ease in coding for reporting officers and clerks not familiar with all the nuances in gap incidents, and to develop a system to easily cull gap incidents from the casualty database. Based on this review, FRA proposes to add the following new codes to Appendix F—Circumstance Codes as follows:

(1) To the ''Physical Act Circumstance Codes'' FRA proposes to add code:

• 80—Stepping across (passenger cars).

(2) To Part III of the ''Location Circumstance Codes'' FRA proposes to add codes:

• G1—Rail Car Door Threshold Plate to Edge of Platform—Gap.

• G2—Area Between Coupled Cars and Platform.

• G3—Area Along Car body, other than Threshold Plate and Platform Edge.

• G4—Car in Vestibule.

(3) To the ''Probable Reason for Injury/Illness Circumstance Codes'' FRA proposes to add code:

• 18—Slipped, fell, stumbled due to Gap.

(4) To the ''Tools, Machinery, Appliances, Structures, Surfaces, (etc.) Circumstance Codes'' FRA proposes to add codes:

• 1G—Door, End or Side—Passenger Train.

• 2G—Door, Trap—Passenger Train.

The instructions for coding gap incidents will be included in the proposed revisions to the FRA Guide.

M. *Appendix G, ''FRA Regional Offices and Headquarters.''* FRA proposes to update these entries.

N. *Appendix H, ''Forms.''* FRA proposes to revise its forms, as follows:

(1) *Form FRA F 6180.97 and Form FRA F 6180.98*. FRA proposes to revise block 36 on Form FRA F 6180.97 ''Date'' to state ''Date Initially Signed/Completed''; and block 44 on Form FRA F 6180.98 ''Date'' to state ''Date Initially Signed/Completed'' to clarify that the block must contain the initial date the form was completed. FRA finds it necessary to make such change because certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. Consequently, FRA is unable to discern if the railroad entered each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by § 225.25 (a)–(e), no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required by § 225.25(f). FRA believes that specifying the date which is required to be maintained on the record will resolve any confusion regarding the requirement.

(2) *Form FRA F 6180.97*. FRA proposes to rename block 12, ''Division'' to ''Subdivision'' and require railroads to provide train accident location by providing subdivision data in this block as a means of improving railroad safety in the area of train accidents. If the railroad is not so divided, enter the word ''system.'' If subdivision data are not applicable, the railroad must enter terminal/yard name. This change would also apply to alternative railroad-designed Form FRA 6180.97. This change is consistent with the proposed ''Division'' to ''Subdivision'' change on Form FRA F 6180.54. *See* paragraph N(6) of this appendix, ''Form FRA F 6180.54'' for additional information.

FRA also wishes to clarify that in situations of joint operations, block 26, ''Equipment Damage (in dollars)'' refers to the aggregate amount of equipment damage incurred for all railroads involved, and that Block 27, ''Track, Signal, Way & Structure Damage (in dollars)'' refers to the aggregate amount of track, signal, way and structure damage incurred for all track owners. This revision does not change existing reporting requirements, and should not represent an additional reporting burden, because both railroads should already be exchanging relevant cost data to determine if the accident was FRA reportable.

(3) *Form FRA F 6180.98*. FRA proposes to replace the ''Social Security Number'' requirement in block 6 with a requirement for ''Employee Identification Number.'' FRA proposes this change in response to privacy concerns. This chapter will include instructions addressing FRA's proposed requirement that (by amending the definition for ''Accountable Injury or Illness'') railroads complete a Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' of all injuries and illnesses when such abnormal condition or disorder manifests *within* the work environment regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment.

(4) *Form FRA F 6180.55*. FRA has eliminated the notary requirement on Form FRA F 6180.55 block 10, and replace it with a requirement that the report be signed under penalty of perjury as follows:

(1) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature).''

(2) If executed without (i.e., outside of) the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature).''

FRA is able to replace the oath requirement, mandated by 49 U.S.C. 20901 with a signature under penalty of perjury under 28 U.S.C. 1746. *See* Section-by-Section analysis for proposed § 225.37, ''Magnetic media transfer and electronic submission,'' for additional information.

(5) *Form FRA 6180.55a*. FRA proposes to require railroads to place an ''X'' representative of ''suicide'' or ''attempted suicide'' be in block 5r when reporting a suicide or attempted suicide. FRA also proposes to add instructions that if an in injury is due to a gap incident, the railroad must use in block 5n (''Cause''), ''Probable Reason for Injury/Illness Circumstance Codes'' code number 18—Slipped, fell, stumbled due to Gap, regardless of whether other codes may also be applicable. *See* Section-by-Section analysis for § 225.15, ''Accidents/incidents not to be reported,'' for additional information. FRA also proposes to change the title of block 5m from ''Result'' to ''Tools'' to remain consistent with the wording in Appendix F.

(6) *Form FRA F 6180.54*. FRA proposes to revise block 30 by changing the name of the block from ''Methods of Operation'' to ''Type of Territory.'' The block will have five coding blocks. Each of the five coding blocks printed in block 30 will be labeled for exclusive use in accordance with codes listed in the proposed Appendix J. The coding

blocks are representative of the following information: The first block (mandatory) will indicate the type of territory (signaled or non-signaled); the second block (mandatory) will indicate the authority for movement; and the third, fourth, and fifth blocks (optional) will indicate additional information through the use of supplemental codes.

FRA proposes to make this change because in the past few years, with the advancement of Positive Train Control (PTC), there has been a growing requirement for FRA to definitively identify signalized versus ''dark'' territory.

The revisions should make completing the block less burdensome and allow for the identification of territory in a manner compatible with the railroads' internal railroad coding system. These changes are consistent with suggestions by railroads and the AAR that such coding be made easier and that the FRA Guide provide clearer instruction. They also take into consideration railroad concerns about expense associated with having to revise the form and expressed the desire for FRA to retain the current form and redesign the coding system but not change the database structure. *See* Proposed Revisions to the FRA Guide, Appendix J, ''Type of Territory Codes'' for additional information.

FRA proposes to rename block 12, ''Division'' to ''Subdivision'' and require railroads to provide train accident location by subdivision data (proposed block 12) on Form FRA F 6180.54 as a means of improving railroad safety in the area of train accidents. If the railroad is not so divided, enter the word ''system.'' If subdivision data is not applicable, the railroad must enter terminal/yard name.

FRA needs a permanent means of determining the location of an accident. This is especially meaningful when a release of hazardous materials or leakage of diesel fuel has occurred. Having the location information for all train accidents will allow FRA to develop better inspection planning, identify locations of hazardous materials contamination affecting the health and/or environment, and provide to the Transportation Security Administration another tool for security planning. Traditionally, FRA and the railroad industry have relied on the railroad milepost system to reference location, and in many cases, location data derived from the milepost system is accurate for short-term issues. Over the long-term, however, railroads do change mileposts during mergers and reorganizations. Also, mileposts can be inaccurate when a railroad is able to build a shorter link, or when a railroad does not remove old mileposts when replacement mileposts, which have a different starting location, are installed.

Ultimately, FRA believes geographic coordinates (*i.e.*, latitude/longitude) are the best indicator of location, and the agency is requesting public comment whether FRA should require railroads to complete longitude and latitude data fields on Form FRA F 6180.54 and Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet).'' *See* Background section of this notice. In the interim, FRA believes that subdivision data is the best location identifier available, and as such is proposing its inclusion on Form FRA F 6180.54.

FRA proposes to add to block 49, ''Special Study Block'' descriptive references ''a.'' to line one and ''b.'' to line two for ease of reference. FRA proposes to require railroads to indicate in block ''Special Study Block'' 49a the type of track an accident/incident occurred on, by using the codes ''CWR'' for continuous welded rail or ''OTH'' for other. FRA notes that the special study block was created to allow for the collection of specific accident information as the need arises. *See* 61 FR 30940, June 18, 1996. The primary purpose of these revisions to the rule is to increase the accuracy, completeness, and utility of FRA's accident database and the clarity of the definitions and requirements. In light of recent track-related accidents/incidents, FRA finds it necessary to gather and analyze data of this nature. The collection and analysis of this data is consistent with 49 CFR part 213 regarding joint bar inspection and reporting.

To account for suicides and attempted suicides on Form FRA F 6180.54, FRA proposes add four Miscellaneous Cause Codes to Appendix C for use in block 38, Primary Cause Code: M309 ''Suicide (Highway-Rail Grade Crossing)''; M310 ''Attempted Suicide (Highway-Rail Grade Crossing)''; M509 ''Suicide (Other Misc.)''; and M510 ''Attempted Suicide (Other Misc.)'' to Appendix C, ''Train Accident Cause Codes'' to indicate ''Suicide or Attempted Suicide.'' Additionally, FRA proposes to require railroads to include suicides and attempted suicides in the casualty counts in boxes 46, 47, and 48, as applicable, and to maintain consistent casualty counts between the different reporting forms.

FRA proposes, for all highway-rail grade crossing fatalities, to require railroads to include a brief description in narrative block 52 of the circumstances of the accident.

FRA also proposes that if an accident is caused by a bond wire attachment issue (*see* proposed Appendix C ''Train Accident Cause Codes''), information on the methods and locations of those attachments be provided in the narrative block 52.

(7) *Forms FRA F 6180.54 and FRA F 6180.57*. FRA proposes to amend the ''Type of Equipment,'' block 25 on Form FRA F 6180.54 and block 24 on Form FRA F 6180.57 as follows:

- Code of ''2'' was ''Passenger Train''; this will be changed to ''Passenger Train—Pulling.''
- Code of ''3'' was ''Commuter Train''; this will be changed to ''Commuter Train—Pulling.''
- New code ''B'' will read ''Passenger Train—Pushing.''
- New code ''C'' will read ''Commuter Train—Pushing.''
- New Code ''D'' will read ''EMU Train.''
- New Code ''E'' will read ''DMU Train.''

These amendments will allow for the delineation of additional types of equipment in FRA's database. Specifically, locomotives pushing or pulling, and EMU and DMU trains. The need for such requirement comes in light of the 2004 passenger train collision in Glendale, California, wherein a number of individuals were killed or injured. Subsequent to this collision, FRA realized that under its current reporting criteria, it could not determine from the database if the passenger or commuter equipment being used was in ''pull'' or ''push'' mode at the time of an accident/incident (*i.e.*, whether the locomotive unit providing power was in the front or back of the train); necessary analysis was completed by determining railroad equipment and practice on individual routes. Also, since EMU and DMU trains are neither pushing nor pulling since all the cars are involved in providing power to the train, FRA needed to provide a code to accurately describe that circumstance as well.

(8) *FRA Form FRA F 6180.57*. FRA proposes to amend block 16, ''Position'' to read (1) Stalled or stuck on crossing (currently ''Stalled on Crossing''); (2) Stopped on Crossing; (3) Moving over crossing; (4) Trapped on crossing by traffic (currently ''Trapped''); (5) Blocked on crossing by gates. In doing so, FRA is clarifying the difference between choices (1) and (4). FRA has found that under the current options railroads do not necessarily understand that current option (4) ''Trapped'' means trapped by traffic. FRA is also adding a fifth option, (5) ''Blocked on crossing by gates'' to indicate those situations

wherein a highway-user perceives that the user is prevented from leaving the crossing because the highway user is blocked in by crossing gates.

FRA proposes to amend Form FRA F 6180.57 by changing the title of block 34 from ''Whistle Ban'' to ''Roadway Conditions'' and include the following options: (A) Dry; (B) Wet; (C) Snow/Slush; (D) Ice; (E) Sand, Mud, Dirt, Oil, Gravel; (F) Water (Standing, Moving). In this block the railroad is to indicate roadway conditions at the time of the highway-rail grade crossing accident/incident. This information is needed, as data provided to FRA regarding ''Weather Conditions'' block 23 does not necessarily indicate road conditions. For example, while the weather may be clear at the time of a highway-rail grade crossing accident/incident, the roadway may be wet, covered with snow, or icy. This change will provide FRA with vital information useful in assessing risks and causes of highway rail grade crossing accident/incidents. FRA no longer needs to capture Whistle Ban/Quiet Zone information of Form FRA 6180.57, as this information is provided to FRA in Quiet Zone Notices of Establishment. *See* FRA 49 CFR part 222.

FRA proposes to change the title of blocks 38, ''Driver's Age''; 39, ''Driver's Gender''; 40, ''Driver Drove Behind or in Front of Train and Struck or Was Struck by Second Train''; and 41, ''Driver,'' by replacing the term ''Driver'' or ''Driver's'' with ''Highway User'' or ''Highway User's'' as applicable; and in blocks 40 (in block title) and 41 (in block's response options) also replace the term ''drove'' with ''went.'' Such change clarifies that FRA proposes that railroads provide the information for all highway users involved in a highway-rail grade crossing accident/incident, rather than just for drivers. FRA is reviewing how best to collect this information, including revising these blocks on Form FRA F 6180.57 and amending the instructions in the FRA Guide for completing the form. Any such form revisions and corresponding changes to the FRA Guide will be published in the Final Rule. In the meantime, FRA welcomes comments and suggestions on this issue.

FRA proposes to add the following descriptive options to block 41: ''Went around or thru temporary barricade'' and ''Suicide or attempted suicide.'' FRA also proposes to revise the ''Drove around or thru the gate'' descriptor to two separate descriptive choices: ''Went around gate''; and ''Went thru gate.''

If ''Went around or thru temporary barricade'' is selected in block 41 due to the temporary closure of the crossing, explain in the narrative block 54 the circumstance of the closure (e.g., the roadway was closed for repair of crossing surface; maintenance/testing of automated warning devices; etc.). Additionally, explain how the closure was accomplished (e.g., roadway closed to traffic with jersey barriers on both approaches; roadway closed with construction barrels on easterly approach; etc.).

In the event of a suicide or attempted suicide, option 8, ''Suicide or attempted suicide'' must be indicated in block 41, regardless of whether other choices may also be applicable. FRA proposes to require the inclusion of the suicide or attempted suicide in the casualty counts in blocks 46, 49, and 52, as applicable, and to maintain consistent casualty counts between the different reporting forms.

FRA proposes to amend the title of block 48, ''Total Number of Highway-Rail Crossing Users'' to read ''Total Number of Vehicle Occupants (including driver).'' Collection of this data allows FRA to cross-check ''Casualty to:'' block 46 with the number of vehicle occupants in block 48. FRA has found that collecting this information serves as an important tool in analyzing reports and ensuring continuity and compliance in reporting. In accordance with Chapter 2 of the FRA Guide, vehicles include automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation, motorized and unmotorized.

FRA proposes to require in ''Special Study Block'' 53a, that railroads are to indicate whether the highway-rail crossing accident/incident was recorded by a locomotive video recorder; and if so, whether information gathered in viewing the recording was used by the railroad to complete the FRA Highway-Rail Grade Crossing Accident/Incident Report. To facilitate the collection of this information, FRA will include instructions in the FRA Guide and place two sets of ''yes or no'' options in block 53a; one for ''video taken'' and one for ''video used.'' Collecting this information will provide FRA with knowledge as to the availability of video footage for particular accidents/incidents; give FRA an indication of how often and to what degree railroads are collecting and reviewing video footage of these accidents/incidents; and make available to FRA an additional tool to study the causes and circumstances of these accidents/incidents. Whether or not video footage was captured and reviewed for a particular accident/incident may also serve as an indicator as to the accuracy or detail of the railroad's accident/incident report. For additional information on requirements related to event recorders, see 49 CFR 229.135, ''Event Recorders.''

FRA is proposing to include instructions that railroads should limit the use of the ''unknown'' option in block 36, ''Crossing warning Interconnected with Highway Signals'' and block 37, ''Crossing Illuminated by Street Lights or Special Lights.'' FRA has found that an inordinate number of completed Form FRA F 6180.57 forms are submitted to the agency with ''unknown'' marked box 36 and/or 37. Railroads have an obligation to submit accurate reports to FRA and not simply mark ''unknown'' without investigating the matter. Therefore, FRA is using this opportunity to require that in Block 36, a railroad must only enter option 3, ''unknown'' after having first consulted with the signal department of the railroad responsible for track maintenance in an effort to obtain the information. In Block 37, the railroad must only enter option 3, ''unknown'' after the railroad has first made a diligent effort to discern the relevant lighting conditions in an effort to obtain the information, but still cannot make a determination. FRA proposes these limitations in order to increase the quantity and accuracy of data the agency gathers related to highway-rail grade crossing accidents/incidents by requiring railroads to make an effort to gather the information.

FRA notes that the agency is proposing many of the Form FRA F 6180.57 revisions in response to a November, 28, 2005, report by the Department of Transportation's Office of Inspector General, ''Audit of Oversight of Highway-Rail Grade Crossing Accident Reporting, Investigations, and Safety Regulations, Report No. MH–2006–016.

(9) *Form FRA F 6180.107*. FRA proposes to revise block 6 on Form FRA F 6180.107, ''Employee Number or Social Security Number'' to ''Employee Identification Number'' to address privacy concerns.

FRA proposes to revise block 23 on Form FRA F 6180.107 ''Date the Log Entry was Completed (mm/dd/yy)'' to state ''Date initially signed/completed.'' FRA proposes this change to clarify that the block must contain the initial date the form was completed. FRA finds it necessary to make such change because the agency has found certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. FRA is making this revision to ensure that it can discern if the railroad entered each

claimed occupational illness on the appropriate record no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as proposed in this NPRM in § 225.25(i)(2). FRA believes that by specifying the date required to be maintained on the record, any confusion regarding the requirement will be resolved.

O. *Appendix I, ''Model Internal Control Plans, Including Model Statement of Policy against Harassment and Intimidation and Model Complaint Procedures.''* FRA proposes to reorder the ICP components in Appendix I's sample Internal Control Plan (ICP) to more closely model the listing of components as set forth in § 225.33.

P. *Appendix J, ''Type of Territory Codes.''* FRA proposes the addition of an Appendix J, which will provide Type of Territory Codes and instructions for use of those codes when completing proposed block 30, ''Type of Territory,'' on Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report.'' The codes will represent type of territory (*i.e.*, signaled territory versus non-signaled territory); the authority for movement (*i.e.*, signal indication; mandatory directive; other than main track—Rule 105); and additional miscellaneous supplemental codes. *See* Proposed Revisions to the FRA Guide, Appendix H, ''Forms'' for additional information.

Q. *Appendix K, ''Electronic Submission of Reports to FRA.''* FRA proposes to add this appendix to specifically provide electronic submission instructions and guidance.

R. *Appendix L, ''49 CFR part 225.''* FRA proposes to include in this section the full regulatory text of part 225.

Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. 44 FR 11034, February 26, 1979. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2006–26173.

A regulatory system should protect and improve the health and safety of the American people. It should perform in a manner that improves the performance of the economy without imposing unacceptable or unreasonable costs on society. The changes in this proposed rulemaking would serve to simplify accident/incident reporting for railroads, ensure that railroad worker casualty statistics conform to the same criteria as statistics from other Federal agencies, and improve the quality of data available for analysis of railroad accidents and incidents.

FRA believes that the amendments to part 225 will increase the accuracy, precision, completeness of railroad accidents/incident records and reports, and correspondingly, FRA's and the railroad industry's information base related to accidents and incidents. This increased awareness will not only aid FRA in assessing and managing risk, but aid railroads and their employees in recognizing and correcting dangerous conditions and practices in order to maintain a safe and healthy environment for railroad workers and the public. Accordingly, FRA is proposing the following regulatory changes:

- Clarify ambiguous definitions and regulations;
- Add necessary definitions;
- Require railroads (by amending the definition of ''Accountable Injury or Illness'') to complete a Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' of all injuries and illnesses when such abnormal condition or disorder manifests *within* the work environment regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment;
- Require the reporting of additional types of injuries to all persons;
- Require the reporting of suicides and attempted suicides;
- Include a comprehensive list of accident/incident reporting exceptions;
- Allow for consolidated accident/incident reporting by integrated railroad systems;
- Set forth requirements for railroad electronic recordkeeping systems for purposes of part 225;
- Update regulatory text, as applicable;
- Enhance the quality of information available for railroad casualty analysis;
- Clarify and limit which highway-rail grade crossing fatalities must be telephonically reported to the National Response Center;
- Clarify and refine the criteria for using and retaining Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related,'' and the alternative railroad-designed record;
- Eliminate the oath and notarization requirements for Form FRA F 6180.55, ''Railroad Injury and Illness Summary'';
- Allow for the electronic submission via CD ROM or the Internet of Forms FRA F 6180.55, ''Railroad Injury and Illness Summary'' and 6180.81, ''Employee Human Factor Attachment'' in .pdf or .jpg format;
- Set forth record retention requirements for certain accident/incident recording and reporting records not previously addressed; and
- Update FRA's address information.

In addition to proposing revisions to its regulations, FRA is proposing revisions to the *FRA Guide* and to certain accident/incident recording and reporting forms.

For the twenty-year period, the estimated quantified costs would total $6,721,717, and the PV of the estimated quantified costs is $3,640,099. For the twenty-year period, the estimated quantified benefits would total $1,772,811, and the PV of the estimated quantified benefits would total $885,565.

The NPV of this analysis is a negative $2,754,533. This means that, according to this analysis and methodology it utilizes for the given twenty-year period, the discounted value of the estimated costs would exceed the discounted value of the estimated benefits by approximately $2,754,533.

FRA anticipates further substantial benefits flowing from more precise and complete accident/incident reporting data. Not only does the analysis of reported data provide information as to the cause of an accident/incident, this data can help determine trends, assess hazards, and assist in the development of effective countermeasures that may then be implemented to prevent similar accidents and incidents from occurring in the future. More precise and complete data will also help to identify where safety-oriented programs should be focused and aid railroads and the Agency in setting priorities among establishments for inspection and safety improvement efforts.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this proposed rule, and certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

Document inspection and copying facilities are available at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, Mail Stop 10, Room W31–109, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA 2006–26173.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121 subpart A. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1.

This proposed rule applies to railroads. There are approximately 665 small railroads that could potentially be affected. FRA anticipates that most of the recording and reporting burdens imposed by this proposed regulation will be born by railroads that are not considered small, due to the decreased likelihood that a small railroad will experience an accident/incident necessitating such recording and/or reporting. For example, on average over the 2005 to 2007 period, small railroads reported approximately only nine percent of all reportable casualties and only 10 percent of all reportable accidents/incidents.

FRA also anticipates that proposed computer related burdens will be born by the larger railroads since smaller railroads since the large railroads choose to retain their accident/incident records and reports electronically in their own systems. Large railroads also submit their accident/incident reports to FRA electronically via their own systems. Most small railroads do their federally required accident/incident recordkeeping and reporting on a personal computer using FRA supplied Accident/Incident Report Generator (AIRG) software. This software allows railroads to send reports to FRA on a CD–ROM or to transmit the information to FRA over the Internet. FRA will send a free updated or new version of the AIRG software to any railroad that requests it. Other small railroads do not use a computer system for reporting. Accordingly, FRA does not anticipate that these burdens will be imposed on small entities.

FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by the proposed rule amendments.

Paperwork Statement—Accident/Incident Reporting and Recordkeeping

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections of this regulation that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.6—Consolidated Reporting (New Requirements).	718 railroads	10 Reports	40 hours	400	$20,400
—Written agreements on subsidiaries.	718 railroads	10 agreements	2 hours	20	1,020
—Notifications on changes to subsidiaries and amended written agreement.	718 railroads	2 notifications + 2 agreements.	1 hr. + 1 hr.	4	204
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	718 railroads	3,300 Reports	15 minutes	825	42,075
225.11—Reporting of Rail Equipment Accidents/ Incidents (Form FRA F 6180.54).	718 railroads	3,600 forms	2 hours	7,200	367,200
225.12(a)—Rail Equipment Accident/Incident Reports—Human Factor (Form FRA F 6180.81).	718 railroads	1,600 forms	15 minutes	400	20,400
225.12(b)—Rail Equipment Accident/Incident Reports—Human Factor—Part I Form FRA F 6180.78.	718 railroads	1,000 notices + 4,010 copies.	10 minutes + 3 minutes.	367	18,717
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	718 railroads	100 requests	20 minutes	33	1,683

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	718 railroads	20 attachments + 20 notices.	15 minutes	10	510
225.12(g)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement—Part II Form FRA F 6180.78.	Railroad Employees	75 statements	1.5 hours	113	5,311
225.12(g)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	Railroad Employees	10 letters	2 hours	20	940
225.13—Late Reports	718 railroads	25 reports	1 hour	25	1,275
—Amended Rail Equipment Accident/ Incident Reports.	718 railroads	50 amended reports/40 copies.	1 hour + 3 minutes	52	2,652
225.18—Alcohol or Drug Involvement	718 railroads	80 reports	30 minutes	40	2,040
—Appended Reports	718 railroads	5 reports	30 minutes	3	153
225.19(a)—Highway-Rail Grade Crossing Accident/Incident Reports—(Form FRA F 6180.57).	718 railroads	2,880 forms	2 hours	5,760	293,760
—(c) Death, Injury, or Occupational Illness—Form FRA F 6180.55a.	718 railroads	12,180 forms	20 min.; 50 min.	4,810	245,310
225.21—Forms:					
—Form FRA F 6180.55—Railroad Injury/Illness Summary.	718 railroads	8,616 forms	10 minutes	1,436	73,236
—Form FRA F 6180.56—Railroad Annual Report of Manhours By State.	718 railroads	718 forms	15 minutes	180	9,180
—Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record.	718 railroads	22,500 forms	1 hour	22,500	1,147,500
—Form FRA F 6180.98—Copies	718 railroads	675 copies	2 minutes	23	1,081
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	718 railroads	14,000 forms	30 minutes	7,000	357,000
—Form FRA F 6180.107—Alternate Record For Illnesses Claimed to Be Work Related.	718 railroads	300 forms	15 minutes	75	3,825
—Form FRA F 6180.39i—Notific. & Investigation Rpt..	654 railroads	1,000 forms	90 minutes	1,500	76,500
225.25—Posting of Monthly Summary	718 railroads	8,616 lists	16 minutes	2,298	117,198
225.27—Retention of Records	718 railroads	1,900 records	2 minutes	63	3,213
225.33—Internal Control Plans—Amended.	718 railroads	25 amendments	14 hours	350	17,850
225.35—Access to Records and Reports—Lists.	15 railroads	400 lists	20 minutes	133	6,783
—Subsequent Years	4 railroads	16 lists	20 minutes	5	255
225.37—Optical Media Transfer and Electronic Submission.	8 railroads	200 transfers	3 minutes	10	510
	718 railroads	2,400 elec submissions.	3 minutes	120	6,120

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Nakia Jackson at 202–493–6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Nakia Jackson, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Jackson at the following address: *robert.brogan@dot.gov*; *nakia.jackson@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements 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. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the

effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA 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'' are 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This is a rule with preemptive effect. The requirements of this rule establish uniform Federal railroad safety laws that must be met, and State requirements covering the same subject are displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including State common law. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

However, while FRA's regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in our regulations that preempts States from having their own accident notification requirements. Under § 225.1, ''[i]ssuance of these regulations under the Federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses that occur in that State.'' FRA does not propose to change this provision that a State may require a railroad to submit to the State copies of accident/incident and injury/illness reports that occur in that State. However, FRA may need to amend the provision with respect to ''suicide data.'' FRA is requesting comments on how to ensure that restrictions on the use and public availability of suicide data at the State level remain consistent with those FRA has prescribed in proposed § 225.41. Specifically, that suicide data (as defined in § 225.5) will not be included in any summaries of data on the number of injuries and illnesses associated with railroad operations; that suicide data is not publicly accessible; and that suicide data will only be available to the public in aggregate format.

Additionally, section 20902 of title 49 of the United States Code, which authorized the Secretary of Transportation to investigate certain accidents and incidents, provides: ''[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation.'' This section contemplates that States have an interest in carrying out simultaneous investigation in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated investigation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. FRA concludes that this proposed rule will not impose any direct compliance costs on State and local governments and has no federalism implications, other than the preemption of State laws covering the subject matter of this final rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order. For the foregoing reasons, FRA believes that this proposed rule is in accordance with the principles and criteria contained in Executive Order 13132.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. See 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal

action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) [$141,000,000 in 2008] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $141,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). To get more information on this matter and to view the Regulations.gov Privacy Notice go to *http://www.regulations.gov/search/footer/privacyanduse.jsp.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 225

Accident investigation, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements, Safety and transportation.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 225 of chapter II, subtitle B of Title 49, Code of Federal Regulations as follows:

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 225.3 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 225.3 Applicability.

* * * * *

(b) The Internal Control Plan requirements in § 225.33(a)(3) through (a)(11) do not apply to—

* * * * *

3. Section 225.5 is amended by adding definitions for discernable cause, event or exposure, injury or illness, railroad carrier, significant aggravation of a pre-existing injury or illness, and suicide data; and by revising paragraphs (1) and (3) of the definition for accident/incident, and the definitions of accountable injury or illness, accountable rail equipment accident/incident, event or exposure arising from the operation of a railroad, general reporting criteria, new case, qualified health care professional, railroad, work environment and work-related to read as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

(1) Any impact between railroad on-track equipment and a highway user (e.g., an automobile, bus, truck, motorcycle, bicycle, farm vehicle, pedestrian or other highway user) at a highway-rail grade crossing. Sidewalks, pathways, shoulders and ditches associated with the crossing are considered to be part of the crossing site. The term ''highway user'' includes pedestrians, cyclists, and all other modes of surface transportation, motorized and unmotorized.

* * * * *

(3) Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6) if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause.

Accountable injury or illness means any abnormal condition or disorder of a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional but does not meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6). When such condition or disorder manifests within the work environment it is an accountable injury or illness regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment. When such condition or disorder manifests outside the work environment it is an accountable injury or illness if the condition or disorder is discernably caused by an event or exposure in the work environment.

Accountable rail equipment accident/incident means a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that does not result in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

* * * * *

Discernable cause means a causal factor capable of being recognized by the senses or the understanding. An event or exposure arising from the operation of a railroad is a discernable cause of (i.e., discernably caused) an injury or illness if, considering the circumstances, it is more likely than not that the event or exposure is a cause of

the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (i.e., a contributing factor).

* * * * *

Event or exposure includes an incident, activity, or occurrence.

Event or exposure arising from the operation of a railroad includes—

(1) With respect to a person who is not an employee of the railroad:

(i) An event or exposure that occurs on property owned, leased, or maintained by the railroad and is related to the performance of the railroad's rail transportation business; or

(ii) An event or exposure that occurs off property owned, leased, or maintained by the railroad directly resulting from one or more of the following railroad operations:

(A) A train accident, a train incident, or a highway-rail grade crossing accident or incident involving the railroad; or

(B) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

(2) With respect to a person who is an employee of the railroad, an event or exposure that is work-related.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1), (2), (3), (4), (5) and (6).

* * * * *

Injury or illness means an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as but not limited to, a skin disease, respiratory disorder, or poisoning. A musculoskeletal disorder is also an injury or illness. Pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6).

* * * * *

New case means a case in which either the injured or ill person has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the injured or ill person previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness, and an event or exposure arising from the operation of a railroad discernably caused the signs or symptoms to reappear.

* * * * *

Qualified health care professional is a health care professional operating within the scope of his or her license, registration, or certification. In addition to licensed physicians, the term qualified health care professional includes members of other occupations associated with patient care and treatment such as chiropractors, podiatrists, physicians assistants, psychologists, and dentists.

Railroad means a railroad carrier.

Railroad carrier means a person providing railroad transportation.

* * * * *

Significant aggravation of a pre-existing injury or illness means aggravation of a pre-existing injury or illness that is discernably caused by an event or exposure arising from the operation of a railroad that results in:

(1) With respect to any person:

(i) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the event or exposure;

(ii) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the event or exposure; or

(iii) Medical treatment in a case where no medical treatment was needed for the injury or illness before the event or exposure, or a change in the course of medical treatment that was being provided before the event or exposure.

(2) With respect to a railroad employee, one or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the event or exposure.

* * * * *

Suicide data means data regarding the death of an individual due to that individual's commission of suicide as determined by a coroner or other public authority; or injury to an individual due to that individual's attempted commission of suicide as determined by a public authority. Only the death of, or injury to, the individual who committed the suicidal act is suicide data.

* * * * *

Work environment means the establishment and other locations where one or more railroad employees are working or present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials processed or used by an employee during the course of his or her work, and activities of a railroad employee associated with his or her work, whether on or off the railroad's property.

Work related means related to an event or exposure occurring within the work environment. An injury or illness is presumed work related if an event or exposure occurring in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The causal event or exposure need not be peculiarly occupational so long as it occurs at work. For example, a causal event or exposure may be outside the employer's control, such as a lightening strike; involve activities that occur at work but are not directly productive, such as horseplay; or involve activities that are not peculiar to work, such as walking on a level floor, bending down, climbing stairs or sneezing, which activities, along with other normal body movements, are considered work events. Regardless, so long as the event or exposure occurred at work and is a discernable cause of the injury or illness, the injury or illness is work related. It does not matter whether there are other or bigger causes as well, or that the activity at work is no different from actions performed outside work. If an injury is within the presumption of work-relatedness, the employer can rebut work-relatedness only by showing that the case falls within an exception listed in § 225.15. In cases where it is not obvious whether a precipitating event or exposure occurred at work or outside work, the employer must evaluate the employee's work duties and environment and decide whether it is more likely than not that an event or exposure at work was at least one of the causes of the injury or illness.

4. Section 225.6 is added to read as follows:

§ 225.6 Consolidated reporting.

A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of this part.

(a) The written request must include the following:

(1) A list of the subsidiary railroads controlled by the parent corporation; and

(2) An explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

(b) The request must be sent to the FRA Docket Clerk, Federal Railroad Administration, U.S. Department of Transportation, RCC–10, Mail Stop 10,

West Building 3rd Floor, Room W31–109, 1200 New Jersey Avenue, SE., Washington, DC 20590. Each request received shall be acknowledged in writing. The acknowledgment shall contain the docket number assigned to the request and state the date the request was received.

(c) FRA will notify the applicant parent corporation of the agency's decision within 90 days of receipt of the application.

(d) If FRA approves the request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, agreeing to assume responsibility for compliance with this part for all named subsidiaries making up the system, and consenting to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating Federal accident/incident reporting requirements. Any change in the subsidiaries making up the railroad system requires immediate notification to FRA and execution of an amended agreement. Executed agreements will be published in the docket.

5. Section 225.7 is amended by revising paragraph (a) to read as follows:

§ 225.7 Public examination and use of reports.

(a) Accident/Incident reports made by railroads in compliance with these rules shall be available to the public in the manner prescribed by part 7 of this title. Accident/Incident reports may be inspected at the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety, West Building 3rd Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Written requests for a copy of a report should be addressed to the Freedom of Information Act Coordinator, Office of Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W33–437, 1200 New Jersey Avenue, SE., Washington, DC 20590, and be accompanied by the appropriate fee prescribed in part 7 of this title. To facilitate expedited handling, each request should be clearly marked ''FOIA Request for Accident/Incident Report.'' For additional information on submitting a FOIA request to FRA see FRA's Web site at *http://www.fra.dot.gov/us/foia*.

* * * * *

6. Section 225.9 is amended by revising paragraph (a)(2)(iii) and (iv) to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) * * *

(2) * * *

(iii) A fatality resulting from a train accident or train incident at a highway-rail grade crossing when death occurs within 24 hours of the accident/incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000 or more to railroad and nonrailroad property; or

* * * * *

7. Section 225.11 is revised to read as follows:

§ 225.11 Reporting of accidents/incidents.

(a) Each railroad subject to this part shall submit to FRA a monthly report of all railroad accidents/incidents described below:

(1) Highway-rail grade crossing accidents/incidents described in § 225.19;

(2) Rail equipment accidents/incidents described in § 225.19; and

(3) Death, injury and occupational illness accidents/incidents described in § 225.19.

(b) The report shall be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of optical media or electronic submission via the Internet, as prescribed in § 225.37, and shall be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports shall be completed as required by the current FRA Guide. A copy of the FRA Guide may be obtained from the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25 West Building 3rd Floor, Room W33–107, 1200 New Jersey Avenue, SE., Washington, DC 20590 or downloaded from FRA's Office of Safety Analysis Web site at *http://safetydata.fra.dot.gov/officeofsafety/*, and click on ''Click Here for Changes in Railroad Accident/Incident Recordkeeping and Reporting.''

8. Section 225.12 is amended by revising paragraph (g)(3) to read as follows:

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

* * * * *

(g) * * *

(3) Information that the employee wishes to withhold from the railroad must not be included in this Supplement. If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (part II of Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report''), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, or to the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25 West Building 3rd Floor, Room W33–306, 1200 New Jersey Avenue, SE., Washington, DC 20590. The letter should include the name of the railroad making the allegations, the date and place of the accident, and the rail equipment accident/incident number.

* * * * *

9. Section 225.15 is revised to read as follows:

§ 225.15 Accidents/incidents not to be reported.

The following accidents/incidents are not reportable:

(a) *With respect to persons other than railroad employees.* A railroad is not to report injuries that occur at highway-rail grade crossings that do not involve the presence or operation of on-track equipment, or the presence of railroad employees then engaged in the operation of a railroad;

(b) *With respect to railroad employees on duty.* A railroad is not to report the following injuries to or illnesses of a railroad employee as Class A—Worker on Duty—Employee, if any of the following conditions in paragraphs (b)(1) through (b)(3) of this section are met. This exception does not affect a railroad's obligation to report injuries to an employee not on duty (Class B—Employee not on Duty), or a railroad's obligation to maintain a ''Railroad Employee Injury/Illness Record'' (Form FRA F 6180.98 or alternative railroad-designed form).

(1) The injury or illness occurred in or about living quarters not arising from the operation of a railroad;

(2) At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee; or

(3) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

(c) *With respect to railroad employees on or off duty.* A railroad is not to report the following injuries to or illnesses of a railroad employee, Class A—Worker

on Duty—Employee or Class B—Employee not on Duty, if any of the following conditions in paragraphs (c)(1) through (c)(7) of this section are met.

(1) The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment;

(2) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball;

(3) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption. However, if the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related and reported as either a Class A—Worker on Duty—Employee or Class B—Employee not on Duty depending on the employee's duty status;

(4) The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours;

(5) The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted;

(6) The illness is the common cold or flu (Note: Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work); or

(7) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

(d) *With respect to contractors and volunteers.* A railroad is not to report injuries to contractors and volunteers that are listed in paragraphs (b) and (c) of this section. For purposes of this paragraph only, an exception listed in paragraphs (b) and (c) referencing ''work environment'' is construed to mean for contractors and volunteers only, on property owned, leased, or maintained by the railroad.

(e) With respect to rail equipment accident/incidents. A railroad is not to report the following rail equipment accidents/incidents:

(1) Cars derailed on industry tracks by non-railroad employees or non-railroad employee vandalism, providing there is no involvement of railroad employees; and

(2) Damage to out of service cars resulting from high water or flooding (e.g., empties placed on a storage or repair track). This exception does not apply if such cars are placed into a moving consist and as a result of this damage a reportable rail equipment accident results.

10. Section 225.17 is amended by revising paragraph (a) and removing paragraph (d) to read as follows:

§ 225.17 Doubtful cases.

(a) The reporting officer of a railroad will ordinarily determine the reportability or nonreportability of an accident/incident after examining all evidence available. The FRA, however, cannot delegate authority to decide matters of judgment when facts are in dispute. In all such cases the decision shall be that of the FRA.

* * * * *

11. Section 225.18 is added to read as follows:

§ 225.18 Alcohol or drug involvement.

(a) In preparing Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report,'' under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(b) For any train accident within the requirement for post-accident testing under § 219.201 of this chapter, the railroad shall append to the Form FRA F 6180.54, ''Rail Equipment Accident/Incident Report,'' any report required by 49 CFR 219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

(c) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

(d) In providing information required by this section, a railroad shall not disclose any information concerning use of controlled substances determined by the railroad's Medical Review Officer to have been consistent with 49 CFR 219.103.

12. Section 225.19 is amended by revising paragraph (d) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) Group III—*Death, injury, or occupational illness.* Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in paragraphs (d)(1) through (d)(6) of this section shall be reported to FRA on Form FRA F 6180.55a, ''Railroad Injury and Illness Summary (Continuation Sheet)'' if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause. The general injury/illness reporting criteria are as follows:

(1) Death to any person;

(2) Injury to any person that results in:

(i) Medical treatment;

(ii) Significant injury diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness; or

(iii) Loss of consciousness;

(3) Injury to a railroad employee that results in:

(i) A day away from work; or

(ii) Restricted work activity or job transfer;

(4) Occupational illness of a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer;

(iii) Loss of consciousness; or

(iv) Medical treatment;

(5) Significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity

or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that:

(i) Meets the application of any of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee;

(E) Musculoskeletal disorder of a railroad employee if this disorder is reportable under one or more of the general reporting criteria; or

(ii) Is a covered data case.

* * * * *

13. Section 225.21 is amended by revising the introductory text and paragraph (j) to read as follows:

§ 225.21 Forms.

The following forms and copies of the ''FRA Guide for Preparing Accident/Incident Reports'' may be obtained from the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building, 3rd Floor, Room W33–107, 1200 New Jersey Avenue, SE., Washington, DC 20590 or downloaded from FRA's Office of Safety Analysis Web site at *http://safetydata.fra.dot.gov/officeofsafety/*, and click on ''Click Here for Changes in Railroad Accident/Incident Recordkeeping and Reporting.''

* * * * *

(j) *Form FRA 6180.107—Alternative Record for Illnesses Claimed To Be Work-Related.* Form FRA F 6180.107 or an alternative railroad-designed record may be used by a railroad in lieu of Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' (described in paragraph (h) of this section), to record each illness claimed by an employee to be work-related that is reported to the railroad for which there is insufficient information for the railroad to determine whether the illness is work-related. This record shall be completed and retained in accordance with the requirements set forth in § 225.25 and § 225.27.

14. Section 225.25 is amended by revising paragraphs (a), (b)(6) and (b)(28), paragraph (e)(28) and paragraph (i), and by adding paragraph (j) to read as follows:

§ 225.25 Recordkeeping.

(a) Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees for each railroad establishment where such employees report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) * * *

(6) Employee identification number;

* * * * *

(28) The railroad shall identify the preparer's name; title; telephone number with area code; and the date the record was initially signed/completed.

* * * * *

(e) * * *

(28) Date the record was initially signed/completed.

* * * * *

(i) Claimed Occupational Illnesses. (1) Each railroad may maintain a Form FRA F 6180.107, ''Alternative Records for Illnesses Claimed To Be Work-Related,'' or an alternate railroad-designed record as described in paragraph (j) of this section, in place of Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record,'' only for those claimed occupational illnesses for which the railroad has not received information sufficient to determine whether the occupational illness is work-related.

(2) Each railroad shall enter each illness claimed to be work-related on the appropriate record, as required by paragraph (i)(1) of this section, as early as practicable, but no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness.

(3) When a railroad does not receive information sufficient to determine whether a claimed occupational illness case is accountable or reportable, the railroad shall make a good faith effort to obtain the necessary information by December 1 of the next calendar year.

(4) Within seven calendar days of receiving additional information regarding a claimed occupational illness case, each railroad shall document receipt of the information, including date received and type of document/information received, in narrative block 19 of Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed To Be Work-Related.''

(5) Within 30 calendar days of receiving additional information regarding a claimed occupational illness, each railroad shall re-evaluate the claimed occupational illness to determine work-relatedness, taking into account the new information, and document any findings resulting from the re-evaluation in narrative block 19 of Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed To Be Work-Related.''.

(6) For any claimed occupational illness case determined to be accountable or reportable, each railroad shall:

(i) Complete a Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record'' or alternative railroad-designed form within seven days of making such determination;

(ii) Retain the Form FRA F 6180.98 ''Railroad Employee Injury and/or Illness Record'' in accordance with § 225.27; and

(iii) Report the occupational illness, as applicable, in accordance with § 225.11.

(7) For any claimed occupational illness case determined not to be accountable or reportable, each railroad shall include the following information in narrative block 19 of Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed To Be Work-Related'' or alternative railroad-designed form:

(i) Why the case does not meet reporting criteria;

(ii) The basis upon which the railroad made this determination; and

(iii) The most authoritative information the railroad relied upon to make the determination.

(8) Although Form FRA 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related'' (or the alternate railroad-designed form), may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

(j) An alternative railroad-designed record may be used in lieu of the Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related.'' Any such alternative record shall contain all of the information required on the Form FRA F 6180.107. Although this information may be displayed in a different order from that on Form FRA F 6180.107, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for all of the railroad's reporting establishments. Railroads may list additional information in the alternative record beyond the information required on Form FRA F 6180.107. The alternative record shall contain, at a minimum, the following information:

(1) Name of Reporting Railroad;

(2) Case/Incident Number;

(3) Employee's Name (first, middle, last);
(4) Employee's Date of Birth (mm/dd/yy);
(5) Employee's Gender;
(6) Employee Identification Number;
(7) Date Employee was Hired (mm/dd/yy);
(8) Employee's Home Address (include street address, city, State and Zip code);
(9) Employee's Home Telephone Number (with area code);
(10) Name of Facility Where Railroad Employee Normally Reports to Work;
(11) Location, or Last Know Facility, Where Employee Reports to Work;
(12) Job Title of Railroad Employee;
(13) Department to Which Employee is Assigned;
(14) Date on Which Employee or Representative Notified Company Personnel of Condition (mm/dd/yy);
(15) Name of Railroad Official Notified;
(16) Title of Railroad Official Notified;
(17) Nature of Claimed Illness;
(18) Supporting Documentation;
(19) Custodian of Documents (Name, Title, and Address);
(20) Location of Supporting Documentation;
(21) Narrative;
(22) Preparer's Name;
(23) Preparer's Title;
(24) Preparer's Telephone Number (with area code); and
(25) Date the record was initially signed/completed (mm/dd/yy).

15. Section 225.27 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 225.27 Retention of records.

(a) Each railroad shall retain the Form FRA F 6180.98, ''Railroad Employee Injury and/or Illness Record''; Form FRA F 6180.107, ''Alternative Record for Illnesses Claimed to be Work-Related''; and the Monthly List of Injuries and Illnesses required by § 225.25 for at least five years after the end of the calendar year to which they relate. Each railroad shall retain Form FRA F 6180.97, ''Initial Rail Equipment Accident/Incident Record,'' required by § 225.25 for at least two years after the end of the calendar year to which it relates. Each railroad must retain the Employee Human Factor Attachments (Form FRA F 6180.81, ''Employee Human Factor Attachment'') required by § 225.12, the written notices to employees required by § 225.12 (Part I of Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report''), and the Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) (Part II of Form FRA F 6180.78, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report'') that have been received by the railroad for at least two years after the end of the calendar year to which they relate.

* * * * *

(c) Each railroad must retain the original hard copy of each completed and signed Form FRA F 6180.55, ''Railroad Injury and Illness Summary,'' that the railroad submits to FRA on optical media (CD–ROM) or electronically via the Internet to *aireports@frasafety.net* for at least five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA electronically via the internet, the railroad must also retain a hard copy print out of FRA's electronic notice acknowledging receipt of the railroad's submission for a period of five years after the calendar year to which the report acknowledged relates.

(d) Railroads may retain accident/incident records as required by paragraphs (a) and (b) of this section in hard copy format or in electronic format subject to the following system requirements:

(1) *Design Requirements.* Any electronic record keeping system used to retain a record required to be retained by this part shall meet the following design parameters:

(i) The electronic record system shall be designed such that the integrity of each record is retained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(ii) The electronic system shall ensure that each record cannot be modified, or replaced, once the record is submitted to FRA;

(iii) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall uniquely identify the person making the amendment and the date the amendment was made;

(iv) The electronic system shall provide for the maintenance of reports as originally submitted to FRA without corruption or loss of data; and

(v) Policies and procedures must be in place to prevent persons from altering electronic records, or otherwise interfering with the electronic system.

(2) *Accessibility and Availability.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following access and availability parameters:

(i) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this part shall be provided to any representative of the FRA or of a State agency participating in investigative and/or surveillance activities under part 212 of this chapter or any other authorized representative for inspection and photocopying upon request in accordance with § 225.35; and

(ii) Paper copies provided to FRA or of a State agency participating in investigative and/or surveillance activities under part 212 of this chapter or any other authorized representative shall be produced in a readable text format and all data shall be identified by narrative descriptions (e.g., ''accident/incident number,'' ''number of days away from work,'' ''date of occurrence,'' etc.).

16. Section 225.33 is amended by revising paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name(s), title(s) and address(es) of the custodian(s) of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

17. Section 225.37 is revised to read as follows:

§ 225.37 Optical media transfer and electronic submission.

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of optical media (CD–ROM), or by means of electronic submission via the Internet:

(1) The Rail Equipment Accident/Incident Report (Form FRA F 6180.54);
(2) The Railroad Injury and Illness Summary (Form FRA F 6180.55);
(3) The Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a);
(4) The Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57); and
(5) The Employee Human Factor Attachment (Form FRA F 6180.81) (the

Employee Human Factor Attachment must be in .pdf or .jpg format only).

(b) Each railroad utilizing the optical media option shall submit to FRA a computer CD–ROM containing the following:

(1) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and

(2) The completed accident/incident report submissions.

(c)(1) Each railroad utilizing the electronic submission via the Internet option shall submit to FRA at *aireports@frasafety.net:*

(i) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and

(ii) The completed accident/incident report submissions.

(2) FRA will provide to the railroad an electronic notice acknowledging receipt of submissions filed electronically via the Internet.

(d) Each railroad employing either the optical media or electronic submission via the Internet option, shall submit its monthly reporting data for the reports identified in paragraph (a) of this section in a year-to-date file format as described in the FRA Guide.

(e) In addition to fulfilling the requirements stated in paragraph (b) through (d) of this section, each railroad initially utilizing either the optical media or electronic submission via the Internet option, shall also initially submit the hard copy report(s) for each accident/incident it reports by such means. FRA will continually review the railroad's submitted hard copy reports against the data the railroad has submitted by means of optical media or electronically via the Internet. Once the optical media or electronic submission via the Internet is in total agreement with the submitted hard copies of the reports for three consecutive reporting months, FRA will notify the railroad, in writing, that submission of the hard copy reports is no longer required.

(f) A railroad choosing to use optical media or electronic submission via the Internet must use one of the approved formats specified in the Companion Guide. FRA will reject submissions that do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing to provide timely submissions of required reports as required by § 225.11.

18. Section 225.41 is added to read as follows:

§ 225.41 Suicide data.

FRA does not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act.

Issued in Washington, DC, on September 2, 2008.

Joseph H. Boardman,

Administrator.

[FR Doc. E8–20706 Filed 9–5–08; 11:15 am]

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September 9, 2008

Part IV

Department of the Treasury

Internal Revenue Service
26 CFR Parts 1 and 602

Implementation of Form 990; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9423]

RIN 1545–BH85

Implementation of Form 990

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations necessary to implement the redesigned Form 990, ''Return of Organization Exempt From Income Tax.'' The final regulations contained in this document make only nonsubstantive revisions to comply with **Federal Register** requirements. The temporary regulations make revisions to the regulations under section 6033 and section 6043 to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The temporary regulations also eliminate the advance ruling process for new organizations, change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax-exempt organizations required under section 6033 of the Internal Revenue Code (Code) to file annual information returns are affected by these temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations (REG–142333–07) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on September 9, 2008.

Applicability Date: These regulations apply to taxable years beginning on or after January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Terri Harris at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these temporary regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2117. 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 or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Form 990

Under section 6033 of the Code, organizations that are exempt from Federal income tax under section 501(a) are generally required to file an annual information return reporting gross income, receipts, disbursements and such other information as the IRS requires. Certain exceptions to this filing requirement apply. For example, churches are not required to file annual information returns. The Treasury regulations direct that the annual information return shall be filed on Form 990, ''Return of Organization Exempt From Income Tax'' or Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.'' The regulations further specify certain information to be reported on the return.

The IRS revises forms and instructions on an annual basis to reflect changes in the law and evolving tax administration needs. On December 20, 2007, the IRS released a redesigned Form 990. The Form 990 had not been significantly revised since 1979, and both the IRS and stakeholders regarded the form as needing major revision to keep pace with changes in the law and with the increasing size, diversity, and complexity of the exempt sector. The new form incorporates many recommendations made in public comments on the discussion draft released on June 14, 2007. With the exception of certain smaller organizations for which there is a graduated transition period, organizations must begin using the new form for the 2008 tax year (returns filed in 2009). The current Form 990 will be used for tax year 2007 (returns filed in 2008) but will be replaced with the redesigned Form 990 beginning with the 2008 tax year. Earlier this year, the IRS released draft instructions for the new form and schedules for public comment.

These regulations make the revisions that must be made to the regulations under sections 6033 and 6043 of the Code to implement the Form 990 redesign. For example, the regulation that currently gives organizations a choice of using either the calendar year or the organization's annual accounting period as the basis for reporting compensation of officers, directors, trustees and certain employees and contractors is revised to require calendar year reporting. Revisions are also made to allow for new threshold amounts for reporting compensation and to expand the scope of organizations subject to information reporting requirements upon a substantial contraction.

In addition, as discussed in further detail in this preamble, these regulations eliminate the advance ruling process and change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Schedule A, ''Public Charity Status and Public Support'' to the redesigned Form 990. These regulations also clarify that support must be reported using the organization's overall method of accounting.

Private Foundation Status and Advance Rulings

Public Support Tests

Under present law, as established in the Tax Reform Act of 1969, an organization described in section 501(c)(3) of the Code is a private foundation unless it meets one of the exceptions described in sections 509(a)(1) through 509(a)(4). Organizations that are described in section 509(a)(1), (2), (3) or (4) are classified as public charities, and are not subject to various excise taxes in Chapter 42 that apply to private foundations. The Code defines two major categories of organizations that are considered public charities and not private foundations because they are broadly publicly supported: (1) Organizations described in section 170(b)(1)(A)(vi), which are not private foundations because they are referenced in section 509(a)(1); and (2) organizations described in section 509(a)(2).

Section 170(b)(1)(A)(vi) encompasses organizations that normally receive a substantial part of their support from a governmental unit or from direct or indirect contributions from the general public. The regulations under section 170 provide that an organization will be described in section 170(b)(1)(A)(vi) if it

normally receives at least 33⅓ percent of its support from governmental units or from the general public. See § 1.170A–9(f). Alternatively, an organization can meet a ''facts and circumstances'' test, under which it may qualify as a section 170(b)(1)(A)(vi) organization if it normally receives at least 10 percent of its support from governmental units or the general public, and can establish that, under all the facts and circumstances, it normally receives a substantial part of its support from governmental units or the general public.

Section 509(a)(2) encompasses organizations that normally receive more than one-third of their support from a combination of gifts, grants, contributions, membership fees, and gross receipts from performing exempt function activities, and normally receive not more than one-third of their support from investment income and unrelated business taxable income. The major difference between the section 509(a)(2) and section 170(b)(1)(A)(vi) tests is that the former includes in support gross receipts from exempt function activities, for example, admission proceeds for a museum or ticket sales for a symphony, while the latter does not. As noted, section 509(a)(2) also includes an investment income limitation. For ease of reference, the tests in sections 170(b)(1)(A)(vi) and 509(a)(2) will be referred to collectively as the public support tests.

The statute does not define, for either provision, the meaning of ''normally.'' The current regulations for both public support tests generally use a rolling four-year computation period, with two exceptions: New organizations and organizations that experience ''substantial and material changes'' in their sources of support for the current year are permitted to use a five-year computation period. For any particular taxable year, the four-year computation period is the four years immediately preceding the current taxable year. For example, for taxable year 1998, the computation period would be taxable years 1994, 1995, 1996, and 1997. The regulations further provide that if the public support test is met for the four-year computation period, the organization will be considered to meet the public support test for the taxable year being tested and the immediately succeeding taxable year. In the example above, a section 170(b)(1)(A)(vi) organization would meet the public support test for 1998 and 1999 if the support it received from the general public and from governmental units for the years 1994 through 1997 exceeded 33⅓ percent of the total support it received for those years.

The effect of the current rule regarding the subsequent taxable year is that an organization must fail to meet a public support test two years in a row to become a private foundation. In the example above, the organization met the public support test for 1998 and 1999, based on support received during the four-year computation period 1994 through 1997. If the organization does not meet a public support test for the 1995 through 1998 computation period, it is still a public charity in 1999 because it met a support test for taxable year 1998. However, if the organization again does not meet a public support test for the 1996 through 1999 computation period, the organization becomes a private foundation effective at the beginning of its taxable year 2000.

Advance Rulings

In its application for recognition of tax-exempt status (Form 1023, ''Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code''), a section 501(c)(3) organization also requests a determination of its private foundation status, that is, whether it is a private foundation and, if not, the Code provision excepting it from private foundation classification. Under the current statute and regulations, an organization can request either an advance ruling or a definitive ruling addressing the organization's exemption under section 501(c)(3) and its private foundation status under section 509(a).

Under the current regulations, a new organization applying for exemption can request a definitive ruling as to its foundation status only if it has completed its first tax year consisting of at least eight full months. In lieu of the general four-year computation period for public support, a new organization requesting a definitive ruling tests its public support based on the years it has been in existence. If an organization qualifies as an organization described in section 509(a)(1) or (2) based on the support received in its initial year(s) of existence, the IRS issues a definitive ruling stating that the organization is recognized as exempt under section 501(c)(3) and classified as a public charity.

If a new organization has not yet completed its first tax year consisting of at least eight full months at the time it applies for recognition of tax exemption, or if the organization so elects, it requests an ''advance ruling'' regarding its private foundation status in its application for exemption. Current regulations provide for an advance ruling period of two or three years, depending on the length of the organization's first tax year, and an additional ''extended advance ruling period'' of three more years if the organization requests. These current regulations have been overridden. In the conference report to the Tax Reform Act of 1984, Congress directed that the advance ruling period in all cases be five years. See H.R. Rep. No. 98–861, 98th Cong., 2d Sess. 1 (1984), 1984–3 CB (Vol. 2) 1090. The advance ruling period gives new organizations time to build up broad public support in the first few years of their existence. In lieu of the general four-year computation period for public support, a new organization requesting an advance ruling tests its public support over the first five years of its existence as an organization described in section 501(c)(3). If an organization demonstrates to the IRS's satisfaction that it can reasonably be expected to meet a public support test during its first five years, the IRS issues an advance ruling stating that the organization is recognized as exempt under section 501(c)(3) and classified as a public charity during its first five years. With limited exceptions, donors can rely on this advance ruling as to public charity status.

At the end of the initial five-year advance ruling period, the organization is required to file Form 8734, ''Support Schedule for Advance Ruling Period'' to establish that it actually met a public support test. As noted above, for this purpose, public support is calculated over the five-year advance ruling period, rather than over a four-year period. If the organization meets a public support test for its advance ruling period, the IRS issues a definitive ruling letter classifying the organization as a public charity. If the organization does not meet a public support test for its advance ruling period, or the organization fails to submit Form 8734, the IRS reclassifies the organization as a private foundation as of its first taxable year and publishes notice of the change in status in the Internal Revenue Bulletin and Publication 78, ''Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,'' which can be searched at *www.irs.gov*. Once notice of a change in status is published, donors can no longer automatically rely on the advance ruling for charitable contribution deduction purposes and must assume that the organization is a private foundation. See § 601.601(d)(2)(ii)(*b*).

An organization that is reclassified as a private foundation is subject to the

section 4940 investment income tax and the section 507 termination tax for its five-year advance ruling period. The other Chapter 42 excise taxes applicable to private foundations do not apply during the five-year advance ruling period. In year six, the reclassified organization is subject to all Chapter 42 excise taxes that apply to private foundations.

The advance ruling process is complex and burdensome for both taxpayers and the IRS and provides little tax administration or compliance benefit. While statistics vary from year to year, approximately 95 percent of the organizations that receive advance rulings later receive definitive rulings that the organizations are public charities at the end of the advance ruling period. The current regulations governing advance rulings are complex, and, as discussed above, were overridden in part by the Tax Reform Act of 1984. Moreover, the public support information that is reported on Form 8734 will be captured on Schedule A of the redesigned Form 990. For these reasons, in its 2003 report, the IRS Advisory Committee for Tax Exempt and Governmental Entities, a group that includes representatives of exempt organizations and practitioners, recommended that the advance ruling process be eliminated.

The IRS believes that it can more effectively deploy its compliance resources by eliminating the advance ruling process and Form 8734 and instead monitoring public charity status based on public support information reported on the revised Schedule A, to the redesigned Form 990. The revised Schedule A sets forth easier-to-follow rules for calculating public support and captures all of the information necessary for the IRS to monitor and verify compliance with the public support tests.

Explanation of Provisions

Private Foundation Status and Advance Rulings

The temporary regulations eliminate the advance ruling process and provide instead that an organization will be a public charity in its first five years if it can show, in its application for exemption, that it can reasonably be expected to receive the requisite public support during such period. The temporary regulations also change the public support computation period for purposes of sections 170(b)(1)(A)(vi) and 509(a)(1) and section 509(a)(2) from a four-year period prior to the tested year to a five-year period that includes the current year. The temporary regulations also eliminate the substantial and material changes exception, which is made obsolete by the establishment of a general five-year computation period. In addition, § 1.170A–9T(f), which corresponds to § 1.170A–9(e) of the prior regulations and governs section 170(b)(1)(A)(vi) organizations, has been revised throughout to simplify some of the language and to provide a better ''road map'' of what the provisions are designed to do.

Elimination of Advance Ruling Process

The temporary regulations eliminate advance rulings and the Form 8734 filing requirement for all new section 501(c)(3) organizations. Under the temporary regulations, if, at the time of the initial application for exemption, an organization can establish to the satisfaction of the IRS that the organization can reasonably be expected to meet a public support test during its first five years, the organization qualifies as publicly supported for its first five years as a section 501(c)(3) organization. The IRS will issue a determination letter stating that the organization is exempt under section 501(c)(3) and is classified as a public charity. The organization will be a public charity for its first five years, regardless of the level of public support it in fact receives during this period. In addition, unlike a new organization's public charity status under an advance ruling, which was conditioned on its ultimate satisfaction of a public support test on a Form 8734 filed with the IRS, under the temporary regulations a new organization that can show it can reasonably be expected to meet a public support test will be classified as a public charity for all purposes during its first five years. The organization will not owe any section 4940 tax or section 507 termination tax with respect to its first five years. Beginning with the organization's sixth year, if the organization cannot establish that it is not a private foundation, such as a public charity or a supporting organization under section 509(a)(3), it will be liable for the section 4940 excise tax and other Chapter 42 excise taxes applicable to private foundations for any year for which it cannot establish that it is not a private foundation.

The standards for whether an organization can reasonably be expected to be publicly supported are drawn from the existing regulations. A new organization required to file Form 990 or Form 990–EZ, ''Short Form Return of Organization Exempt From Income Tax,'' will be required to report its support on Schedule A every year, but it will not be required to file Form 8734 after its first five years. Organizations will be required to meet a public support test using the general five-year computation period beginning in their sixth taxable years. The five-year computation period is discussed in detail in this preamble.

Computation Period for Public Support

The temporary regulations change the computation period for public support from a four-year period comprised of the four years prior to the tested year to a five-year period that includes the current year. Because all organizations will use a five-year computation period under the temporary regulations, the temporary regulations eliminate the substantial and material change exception, which allowed organizations to use a five-year computation period rather than the four-year computation period under certain circumstances.

An organization that meets a public support test for the current taxable year is treated as publicly supported for the current taxable year and the immediately succeeding taxable year. Thus, for example, a calendar year organization that meets a public support test for taxable year 2011, based on the five-year computation period 2007 through 2011, is a public charity for taxable years 2011 and 2012. If the organization cannot meet a public support test for taxable year 2012 (based on the five-year computation period 2008 through 2012), it still will be a public charity for taxable year 2012, because it met the public support test for taxable year 2011 (based on the five-year computation period 2007 through 2011). If, however, the organization cannot meet a public support test for taxable year 2013 as well, based on the computation period 2009 through 2013, the organization will be classified as a private foundation as of the beginning of taxable year 2013. Because an organization that cannot meet a public support test for the current taxable year is at risk of private foundation classification as of the first day of the subsequent taxable year, organizations may wish to carefully monitor their public support calculations.

The IRS and the Treasury Department recognize that an organization may not be able to compute its public support for the current taxable year until some time in the subsequent taxable year. In the example above, taxable year 2013 may have already begun by the time the calendar year organization computes its public support for taxable year 2012 and realizes (perhaps for the first time) that it is at risk of being classified as a private foundation as of January 1, 2013.

Moreover, the organization may not know definitively that it is a private foundation for taxable year 2013 until some time in 2014, when it is able to definitively calculate its public support. Accordingly, the IRS will not assert private foundation excise taxes and/or penalties for all or part of the first taxable year in which an organization is reclassified as a private foundation due to failure to satisfy a public support test in cases where the imposition of such taxes would lead to unfair or inequitable results, such as where the change in the organization's public support was unforeseeable or due to circumstances beyond the organization's control. Organizations that believe that the imposition of private foundation excise taxes and/or penalties against them for all or part of the first year in which they are reclassified as a private foundation would be unfair or inequitable should contact the IRS, Exempt Organizations, Rulings and Agreements, Washington, DC, at (202) 283–4905. An organization will be required to provide to the IRS all of the relevant facts and circumstances establishing that the imposition of private foundation taxes would be unfair or inequitable. Comments are requested regarding the specific circumstances that may warrant relief.

The existing regulations contain numerous examples reflecting the four-year computation period. The temporary regulations update the examples to reflect the new computation period. These examples are in § 1.170A–9T(f)(9), § 1.509(a)–3T(c)(6) and § 1.509(a)–3T(e)(3).

Method of Accounting

Previously, when a section 501(c)(3) organization computed its public support, it was required to use the cash method of accounting to report the amount of public support it received on Schedule A, even if it used the accrual method of accounting in keeping its books under section 446, and in otherwise reporting on Form 990. Under these temporary regulations, when a section 501(c)(3) organization computes its public support and reports the information on Schedule A, it must use the same accounting method that it uses in keeping its books under section 446 and that it otherwise uses to report on its Form 990. An organization that uses the accrual method will not be able to use the support information reported on Form 990 for prior years (because that support was reported using the cash method) to compute its public support for the current year, and instead must report all support for the computation period on the accrual method.

Reliance

These temporary regulations provide that donors may rely on an organization's ruling that the organization is described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) until notice of a change in status is provided to the public (such as by publication in the Internal Revenue Bulletin), unless the donor was responsible for or aware of the act or failure to act that results in the organization's loss of public charity status. This rule is substantively the same as the rules contained in the current regulations. The regulations further provide that donors may rely on advance rulings that expire on or after June 9, 2008, until notice of a change in status is provided to the public (such as by publication in the Internal Revenue Bulletin).

Effective/Applicability Date and Transition Rules

These temporary regulations are effective on September 9, 2008, and apply to taxable years beginning on or after January 1, 2008. All organizations, including organizations that received a definitive ruling prior to the effective date of these regulations, must use the new five-year computation period to calculate public support for their first taxable year beginning on or after January 1, 2008 and for all subsequent taxable years.

These regulations provide a transition rule under which an organization that cannot meet a public support test for its first taxable year beginning on or after January 1, 2008, using the five-year computation period will continue to qualify as a public charity for its 2008 taxable year if it satisfied a public support test for its 2007 taxable year, based on public support received over the four-year period 2003 through 2006.

These regulations also provide a transition rule under which organizations that received advance rulings that expire on or after June 9, 2008, are treated as new public charities under the new regulations, that is, public charities for all purposes without regard to public support in fact received during the first five years of their existence as section 501(c)(3) organizations. This rule effectively applies the temporary regulations to all organizations that are in their advance ruling period as of the effective date of these temporary regulations. As such, these organizations will not have to file Form 8734 at the end of the advance ruling period. Grantors and contributors can rely upon these organizations' advance ruling letter as if it were a definitive ruling letter. The IRS plans to send follow-up letters to such organizations explaining the new rules. An organization that did not timely file Form 8734 at the expiration of its advance ruling period is not covered by the transition rule. Such an organization must file information with the IRS establishing that it met a public support test during its advance ruling period in order to qualify as a public charity during its first five years.

Forms 1023 filed prior to the effective date of these regulations that have not yet been processed by the IRS will be processed under the new regulations. The IRS will issue definitive rulings regarding private foundation status to such organizations.

Community Trust Rules

Sections 1.170A–9(f)(10) through 1.170A–9(f)(14), which establish rules for when multiple trusts can be treated as a single entity for purposes of the public support tests, provide old transition rules that are obsolete, and, therefore, the transition rules are being deleted in these temporary regulations.

Compensation Reporting

Current § 1.6033–2(a)(2)(ii)(*g*) requires that exempt organizations report on Form 990 the names and addresses of all officers, directors, trustees, and persons having responsibilities or powers similar to those of officers, directors or trustees, of the organization. The reference to a person having responsibilities and powers similar to those of officers, directors or trustees is meant to capture those persons who function as officers, directors or trustees of the organization, regardless of title, as well as the key employees of the organization. The redesigned Form 990 expanded the definition of key employee to cover not only persons having responsibilities or powers similar to those of officers, directors or trustees, but also persons who manage a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization. The redesigned Form 990 requires reporting for only those key employees whose compensation exceeds $150,000. These temporary regulations add key employees to the list of persons in § 1.6033–2T(a)(2)(ii)(*g*) who may be required to be reported on Form 990, as prescribed by publication, form or instructions.

Current § 1.6033–2(a)(2)(ii)(*g*) requires that exempt organizations that make payments of more than $30,000 annually to employees and independent contractors report these persons' names

and addresses on Form 990. Current § 1.6033–2(a)(2)(ii)(*h*) requires a schedule showing the compensation or other payments made to the persons listed in paragraph (a)(2)(ii)(*g*). The redesigned Form 990 requires an organization to report, for each person listed (other than a key employee or a former director or trustee of the organization), compensation and other payments totaling more than $100,000 annually paid by the organization and its related organizations to the person. For key employees, the redesigned Form 990 requires an organization to report compensation and other payments totaling more than $150,000 annually paid by the organization and its related organizations to the person. For former directors and trustees, the redesigned Form 990 requires an organization to report compensation and other payments totaling more than $10,000 annually paid by the organization and its related organizations to the person solely on account of the person's past services as a director or trustee of the organization. As amended in these temporary regulations, § 1.6033–2T(a)(2)(ii)(*g*) gives the Commissioner discretion to revise the threshold amount for reporting by form and instruction.

Furthermore, the current rule in § 1.6033–2(a)(2)(ii)(*h*), which requires generally the reporting of compensation paid by an organization during its annual accounting period (or during the calendar year ending within such period), imposes no requirement that the compensation reported on Form 990 be consistent with what is reported on Form W–2, ''Wage and Tax Statement,'' or Form 1099–MISC, ''Miscellaneous Income.'' The current rule permits, but does not require, a fiscal year organization to report paid compensation on a calendar year basis. The redesigned Form 990 (Part VII and Schedule J) requires that compensation reported as paid to officers and other employees be consistent with Form W–2 (box 5) and that compensation reported as paid to directors, individual trustees, and independent contractors be consistent with Form 1099–MISC (box 7). As amended by these temporary regulations, § 1.6033–2T(a)(2)(ii)(*h*) requires an organization to report compensation it has paid during the calendar year ending with or within the organization's annual accounting period, or during such other period as specified by form or form instructions. The rule in these temporary regulations will ensure consistency in compensation reporting, provide greater certainty about what compensation is to be reported, and reduce the reporting burden for most filing organizations. A fiscal year organization will continue to be required to use fiscal year accounting when reporting aggregate compensation as an expense item (Form 990, Part IX). In addition, an organization will not be required to reconcile compensation for individuals reported in Part VII with compensation for such individuals included in its Part IX statement of expenses.

Asset Disposition Reporting

Schedule N, ''Liquidation, Termination, Dissolution, or Significant Disposition of Assets,'' of the redesigned Form 990 requires information about organizations that liquidate, terminate, or dissolve, or sell, exchange, dispose of or otherwise transfer more than 25 percent of the organization's assets. The collection of this information is authorized by section 6033, the general authorization for the collection of information on Form 990. The collection of information with respect to liquidations, dissolutions, terminations and substantial contractions is also authorized by section 6043(b). While section 6043(b) and its companion penalty provision section 6652(c) contemplate a separate return, since 1981 this information has been collected on Form 990.

In order to eliminate the potential for inconsistency and confusion by taxpayers, the regulations under section 6043(b) have been amended so that they are consistent with section 6033 and the redesigned Schedule N. Generally, current § 1.6043–3(b)(8) excuses from the information reporting requirement of section 6043(b) organizations other than former section 501(c)(3) organizations. The IRS believes that this exception is too broad, because information reporting from other exempt organizations may facilitate sound tax administration. Therefore, these temporary regulations amend § 1.6043–3(b)(8) to provide discretion to narrow the exception and require reporting from organizations exempt under other Code sections by form or form instructions. In addition, these temporary regulations remove the definition of ''substantial contraction'' in § 1.6043–3(d)(1), leaving this term to be defined by form or form instructions.

Private Foundation Termination

Section 1.507–2, which addresses private foundation terminations under section 507(b), contains references to the four-year computation period for public support and old transition rules related to 12-month terminations that are obsolete. These temporary regulations revise § 1.507–2 to delete references to the four-year computation period and the transition rules related to 12-month terminations.

Revisions To Comply With ***Federal Register***

The final regulations make various nonsubstantive revisions to comply with **Federal Register** requirements. For example, the undesignated flush language preceding prior § 1.170A–9(a) was designated as paragraph (a), and all following paragraphs were redesignated accordingly.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that burden on tax-exempt entities will be reduced by (1) eliminating the separate advance ruling process and the additional process for subsequently seeking a definitive ruling, (2) clarifying rules regarding the method of accounting and period for reporting certain items, and (3) providing discretion for the IRS to narrow or clarify circumstances under which reporting is required. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Terri Harris, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2**. Section 1.170A–9 is amended as follows:

■ 1. Paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) are redesignated as paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j), respectively.

■ 2. The undesignated text following the section heading is designated as paragraph (a).

■ 3. The newly-designated paragraphs (a) and (d) are revised.

■ 4. New paragraph (k) is added.

The addition and revisions read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

(a) The term *section 170(b)(1)(A) organization* as used in the regulations under section 170 means any organization described in paragraphs (b) through (j) of this section, effective with respect to taxable years beginning after December 31, 1969, except as otherwise provided. Section 1.170–2(b) shall continue to be applicable with respect to taxable years beginning prior to January 1, 1970. The term *one or more organizations described in section 170(b)(1)(A) (other than clauses (vii) and (viii))* as used in sections 507 and 509 of the Internal Revenue Code (Code) and the regulations means one or more organizations described in paragraphs (b) through (f) of this section, except as modified by the regulations under part II of subchapter F of chapter 1 or under chapter 42.

* * * * *

(d) *Hospitals and medical research organizations*—(1) *Hospitals*. An organization (other than one described in paragraph (d)(2) of this section) is described in section 170(b)(1)(A)(iii) if—

(i) It is a hospital; and

(ii) Its principal purpose or function is the providing of medical or hospital care or medical education or medical research.

(A) The term *hospital* includes—

(*1*) Federal hospitals; and

(*2*) State, county, and municipal hospitals which are instrumentalities of governmental units referred to in section 170(c)(1) and otherwise come within the definition. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a ''hospital'' within the meaning of paragraph (d)(1)(i) of this section if its principal purpose or function is the providing of hospital or medical care. For purposes of this paragraph (d)(1)(ii), the term *medical care* shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person treated. An organization, all the accommodations of which qualify as being part of a ''skilled nursing facility'' within the meaning of 42 U.S.C. 1395x(j), may qualify as a ''hospital'' within the meaning of paragraph (d)(1)(i) of this section if its principal purpose or function is the providing of hospital or medical care. For taxable years ending after June 28, 1968, the term *hospital* also includes cooperative hospital service organizations which meet the requirements of section 501(e) and § 1.501(e)–1.

(B) The term *hospital* does not, however, include convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is to train handicapped individuals to pursue some vocation. An organization whose principal purpose or function is the providing of medical education or medical research will not be considered a ''hospital'' within the meaning of paragraph (d)(1)(i) of this section, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an inpatient or outpatient basis, as an integral part of its medical education or medical research functions. See, however, paragraph (d)(2) of this section with respect to certain medical research organizations.

(2) *Certain medical research organizations*—(i) *Introduction*. A medical research organization is described in section 170(b)(1)(A)(iii) if the principal purpose or functions of such organization are medical research and if it is directly engaged in the continuous active conduct of medical research in conjunction with a hospital. In addition, for purposes of the 50 percent limitation of section 170(b)(1)(A) with respect to a contribution, during the calendar year in which the contribution is made such organization must be committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made. An organization need not receive contributions deductible under section 170 to qualify as a medical research organization and such organization need not be committed to spend amounts to which the limitation of section 170(b)(1)(A) does not apply within the 5-year period referred to in this paragraph (d)(2)(i). However, the requirement of continuous active conduct of medical research indicates that the type of organization contemplated in this paragraph (d)(2) is one which is primarily engaged directly in the continuous active conduct of medical research, as compared to an inactive medical research organization or an organization primarily engaged in funding the programs of other medical research organizations. As in the case of a hospital, since an organization is ordinarily not described in section 170(b)(1)(A)(iii) as a hospital unless it functions primarily as a hospital, similarly a medical research organization is not so described unless it is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital. Accordingly, the rules of this paragraph (d)(2) shall only apply with respect to such medical research organizations.

(ii) *General rule*. An organization (other than a hospital described in paragraph (d)(1) of this section) is described in section 170(b)(1)(A)(iii) only if within the meaning of this paragraph (d)(2):

(A) The principal purpose or functions of such organization are to engage primarily in the conduct of medical research; and

(B) It is primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital which is—

(*1*) Described in section 501(c)(3);

(*2*) A Federal hospital; or

(*3*) An instrumentality of a governmental unit referred to in section 170(c)(1).

(C) In order for a contribution to such organization to qualify for purposes of the 50 percent limitation of section 170(b)(1)(A), during the calendar year in which such contribution is made or treated as made, such organization must be committed (within the meaning of paragraph (d)(2)(viii) of this section) to spend such contribution for such active conduct of medical research before January 1 of the fifth calendar year beginning after the date such contribution is made. For the meaning of the term ''medical research'' see paragraph (d)(2)(iii) of this section. For the meaning of the term ''principal purpose or functions'' see paragraph (d)(2)(iv) of this section. For the meaning of the term ''primarily engaged directly in the continuous active conduct of medical research'' see

paragraph (d)(2)(v) of this section. For the meaning of the term ''medical research in conjunction with a hospital'' see paragraph (d)(2)(vii) of this section.

(iii) *Definition of medical research.* *Medical research* means the conduct of investigations, experiments, and studies to discover, develop, or verify knowledge relating to the causes, diagnosis, treatment, prevention, or control of physical or mental diseases and impairments of man. To qualify as a medical research organization, the organization must have or must have continuously available for its regular use the appropriate equipment and professional personnel necessary to carry out its principal function. Medical research encompasses the associated disciplines spanning the biological, social and behavioral sciences. Such disciplines include chemistry (biochemistry, physical chemistry, bioorganic chemistry, etc.), behavioral sciences (psychiatry, physiological psychology, neurophysiology, neurology, neurobiology, and social psychology, etc.), biomedical engineering (applied biophysics, medical physics, and medical electronics, for example, developing pacemakers and other medically related electrical equipment), virology, immunology, biophysics, cell biology, molecular biology, pharmacology, toxicology, genetics, pathology, physiology, microbiology, parasitology, endocrinology, bacteriology, and epidemiology.

(iv) *Principal purpose or functions.* An organization must be organized for the principal purpose of engaging primarily in the conduct of medical research in order to be an organization meeting the requirements of this paragraph (d)(2). An organization will normally be considered to be so organized if it is expressly organized for the purpose of conducting medical research and is actually engaged primarily in the conduct of medical research. Other facts and circumstances, however, may indicate that an organization does not meet the principal purpose requirement of this paragraph (d)(2)(iv) even where its governing instrument so expressly provides. An organization that otherwise meets all of the requirements of this paragraph (d)(2) (including this paragraph (d)(2)(iv)) to qualify as a medical research organization will not fail to so qualify solely because its governing instrument does not specifically state that its principal purpose is to conduct medical research.

(v) *Primarily engaged directly in the continuous active conduct of medical research*—(A) In order for an organization to be primarily engaged directly in the continuous active conduct of medical research, the organization must either devote a substantial part of its assets to, or expend a significant percentage of its endowment for, such purposes, or both. Whether an organization devotes a substantial part of its assets to, or makes significant expenditures for, such continuous active conduct depends upon the facts and circumstances existing in each specific case. An organization will be treated as devoting a substantial part of its assets to, or expending a significant percentage of its endowment for, such purposes if it meets the appropriate test contained in paragraph (d)(2)(v)(B) of this section. If an organization fails to satisfy both of such tests, in evaluating the facts and circumstances, the factor given most weight is the margin by which the organization failed to meet such tests. Some of the other facts and circumstances to be considered in making such a determination are—

(*1*) If the organization fails to satisfy the tests because it failed to properly value its assets or endowment, then upon determination of the improper valuation it devotes additional assets to, or makes additional expenditures for, such purposes, so that it satisfies such tests on an aggregate basis for the prior year in addition to such tests for the current year;

(*2*) The organization acquires new assets or has a significant increase in the value of its securities after it had developed a budget in a prior year based on the assets then owned and the then current values;

(*3*) The organization fails to make expenditures in any given year because of the interrelated aspects of its budget and long-term planning requirements, for example, where an organization prematurely terminates an unsuccessful program and because of long-term planning requirements it will not be able to establish a fully operational replacement program immediately; and

(*4*) The organization has as its objective to spend less than a significant percentage in a particular year but make up the difference in the subsequent few years, or to budget a greater percentage in an earlier year and a lower percentage in a later year.

(B) For purposes of this section, an organization which devotes more than one half of its assets to the continuous active conduct of medical research will be considered to be devoting a substantial part of its assets to such conduct within the meaning of paragraph (d)(2)(v)(A) of this section. An organization which expends funds equaling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research will be considered to have expended a significant percentage of its endowment for such purposes within the meaning of paragraph (d)(2)(v)(A) of this section.

(C) Engaging directly in the continuous active conduct of medical research does not include the disbursing of funds to other organizations for the conduct of research by them or the extending of grants or scholarships to others. Therefore, if an organization's primary purpose is to disburse funds to other organizations for the conduct of research by them or to extend grants or scholarships to others, it is not primarily engaged directly in the continuous active conduct of medical research.

(vi) *Special rules.* The following rules shall apply in determining whether a substantial part of an organization's assets are devoted to, or its endowment is expended for, the continuous active conduct of medical research activities:

(A) An organization may satisfy the tests of paragraph (d)(2)(v)(B) of this section by meeting such tests either for a computation period consisting of the immediately preceding taxable year, or for the computation period consisting of the immediately preceding four taxable years. In addition, for taxable years beginning in 1970, 1971, 1972, 1973, and 1974, if an organization meets such tests for the computation period consisting of the first four taxable years beginning after December 31, 1969, an organization will be treated as meeting such tests, not only for the taxable year beginning in 1974, but also for the preceding four taxable years. Thus, for example, if a calendar year organization failed to satisfy such tests for a computation period consisting of 1969, 1970, 1971, and 1972, but on the basis of a computation period consisting of the years 1970 through 1973, it expended funds equaling 3.5 percent or more of the fair market value of its endowment for the continuous active conduct of medical research, such organization will be considered to have expended a significant percentage of its endowment for such purposes for the taxable years 1970 through 1974. In applying such tests for a four-year computation period, although the organization's expenditures for the entire four-year period shall be aggregated, the fair market value of its endowment for each year shall be summed, even though, in the case of an asset held throughout the four-year period, the fair market value of such an asset will be counted four times.

Similarly, the fair market value of an organization's assets for each year of a four-year computation period shall be summed.

(B) Any property substantially all the use of which is ''substantially related'' (within the meaning of section 514(b)(1)(A)) to the exercise or performance of the organization's medical research activities will not be treated as part of its endowment.

(C) The valuation of assets must be made with commonly accepted methods of valuation. A method of valuation made in accordance with the principles stated in the regulations under section 2031 constitutes an acceptable method of valuation. Assets may be valued as of any day in the organization's taxable year to which such valuation applies, provided the organization follows a consistent practice of valuing such asset as of such date in all taxable years. For purposes of paragraph (d)(2)(v) of this section, an asset held by the organization for part of a taxable year shall be taken into account by multiplying the fair market value of such asset by a fraction, the numerator of which is the number of days in such taxable year that the organization held such asset and the denominator of which is the number of days in such taxable year.

(vii) *Medical research in conjunction with a hospital.* The organization need not be formally affiliated with a hospital to be considered primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital, but in any event there must be a joint effort on the part of the research organization and the hospital pursuant to an understanding that the two organizations will maintain continuing close cooperation in the active conduct of medical research. For example, the necessary joint effort will normally be found to exist if the activities of the medical research organization are carried on in space located within or adjacent to a hospital, the organization is permitted to utilize the facilities (including equipment, case studies, etc.) of the hospital on a continuing basis directly in the active conduct of medical research, and there is substantial evidence of the close cooperation of the members of the staff of the research organization and members of the staff of the particular hospital or hospitals. The active participation in medical research by members of the staff of the particular hospital or hospitals will be considered to be evidence of such close cooperation. Because medical research may involve substantial investigation, experimentation and study not immediately connected with hospital or medical care, the requisite joint effort will also normally be found to exist if there is an established relationship between the research organization and the hospital which provides that the cooperation of appropriate personnel and the use of facilities of the particular hospital or hospitals will be required whenever it would aid such research.

(viii) *Commitment to spend contributions.* The organization's commitment that the contribution will be spent within the prescribed time only for the prescribed purposes must be legally enforceable. A promise in writing to the donor in consideration of his making a contribution that such contribution will be so spent within the prescribed time will constitute a commitment. The expenditure of contributions received for plant, facilities, or equipment, used solely for medical research purposes (within the meaning of paragraph (d)(2)(ii) of this section), shall ordinarily be considered to be an expenditure for medical research. If a contribution is made in other than money, it shall be considered spent for medical research if the funds from the proceeds of a disposition thereof are spent by the organization within the five-year period for medical research; or, if such property is of such a kind that it is used on a continuing basis directly in connection with such research, it shall be considered spent for medical research in the year in which it is first so used. A medical research organization will be presumed to have made the commitment required under this paragraph (d)(2)(viii) with respect to any contribution if its governing instrument or by-laws require that every contribution be spent for medical research before January 1 of the fifth year which begins after the date such contribution is made.

(ix) *Organizational period for new organizations.* A newly created organization, for its ''organizational'' period, shall be considered to be primarily engaged directly in the continuous active conduct of medical research in conjunction with a hospital within the meaning of paragraphs (d)(2)(v) and (d)(2)(vii) of this section if during such period the organization establishes to the satisfaction of the Commissioner that it reasonably can be expected to be so engaged by the end of such period. The information to be submitted shall include detailed plans showing the proposed initial medical research program, architectural drawings for the erection of buildings and facilities to be used for medical research in accordance with such plans, plans to assemble a professional staff and detailed projections showing the timetable for the expected accomplishment of the foregoing. The ''organizational'' period shall be that period which is appropriate to implement the proposed plans, giving effect to the proposed amounts involved and the magnitude and complexity of the projected medical research program, but in no event in excess of three years following organization.

(x) *Examples.* The application of this paragraph (d)(2) may be illustrated by the following examples:

Example 1. N, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of N's assets were contributed to it by A and consist of a diversified portfolio of stocks and bonds. N's endowment earns 3.5 percent annually, which N expends in the conduct of various medical research programs in conjunction with Y hospital. N is located adjacent to Y hospital, makes substantial use of Y's facilities, and there is close cooperation between the staffs of N and Y. N is directly engaged in the continuous active conduct of medical research in conjunction with a hospital, meets the principal purpose test described in paragraph (d)(2)(iv) of this section, and is therefore an organization described in section 170(b)(1)(A)(iii).

Example 2. O, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. All of O's assets consist of a diversified portfolio of stocks and bonds. O's endowment earns 3.5 percent annually, which O expends in the conduct of various medical research programs in conjunction with certain hospitals. However, in 1974, O receives a substantial bequest of additional stocks and bonds. O's budget for 1974 does not take into account the bequest and as a result O expends only 3.1 percent of its endowment in 1974. However, O establishes that it will expend at least 3.5 percent of its endowment for the active conduct of medical research for taxable years 1975 through 1978. O is therefore directly engaged in the continuous active conduct of medical research in conjunction with a hospital for taxable year 1975. Since O also meets the principal purpose test described in paragraph (d)(2)(iv) of this section, it is therefore an organization described in section 170(b)(1)(A)(iii) for taxable year 1975.

Example 3. M, an organization referred to in section 170(c)(2), was created to promote human knowledge within the field of medical research and medical education. M's activities consist of the conduct of medical research programs in conjunction with various hospitals. Under such programs, researchers employed by M engage in research at laboratories set aside for M within the various hospitals. Substantially all of M's assets consist of 100 percent of the stock of X corporation, which has a fair market value of approximately 100 million dollars. X pays M approximately 3.3 million dollars in dividends annually, which M expends in the

conduct of its medical research programs. Since M expends only 3.3 percent of its endowment, which does not constitute a significant percentage, in the active conduct of medical research, M is not an organization described in section 170(b)(1)(A)(iii) because M is not engaged in the continuous active conduct of medical research.

(xi) *Special rule for organizations with existing ruling.* This paragraph (d)(2)(xi) shall apply to an organization that prior to January 1, 1970, had received a ruling or determination letter which has not been expressly revoked holding the organization to be a medical research organization described in section 170(b)(1)(A)(iii) and with respect to which the facts and circumstances on which the ruling was based have not substantially changed. An organization to which this paragraph (d)(2)(xi) applies shall be treated as an organization described in section 170(b)(1)(A)(iii) for a period not ending prior to 90 days after February 13, 1976 (or where appropriate, for taxable years beginning before such 90th day). In addition, with respect to a grantor or contributor under sections 170, 507, 545(b)(2), 556(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, the status of an organization to which this paragraph (d)(2)(xi) applies will not be affected until notice of change of status under section 170(b)(1)(A)(iii) is made to the public (such as by publication in the Internal Revenue Bulletin). The preceding sentence shall not apply if the grantor or contributor had previously acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 170(b)(1)(A)(iii) organization.

* * * * *

(k) *Effective/applicability date.* This section shall apply to taxable years beginning after December 31, 1969. The applicability of paragraph (f) of this section shall be limited to taxable years beginning before January 1, 2008.

■ **Par. 3.** Section 1.170A–9T is added to read as follows:

§ 1.170A–9T Definition of section 170(b)(1)(A) organization (temporary).

(a) through (e) [Reserved]. For further guidance, see § 1.170A–9(a) through (e).

(f) *Definition of section 170(b)(1)(A)(vi) organization*—(1) *In general.* An organization is described in section 170(b)(1)(A)(vi) if it—

(i) Is referred to in section 170(c)(2) (other than an organization specifically described in paragraphs (b) through (e) of this section); and

(ii) Normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public (''publicly supported''). For purposes of this paragraph (f)(1)(ii), an organization is publicly supported if it meets the requirements of either paragraph (f)(2) of this section (33⅓ percent support test) or paragraph (f)(3) of this section (facts and circumstances test). Paragraph (f)(4) of this section defines normally for purposes of the 33⅓ percent support test, the facts and circumstances test and for new organizations in the first 5 years of the organization's existence as a section 501(c)(3) organization. Paragraph (f)(5) of this section provides for determinations of foundation classification and rules for reliance by donors and contributors. Paragraphs (f)(6), (7), and (8) of this section list the items that are included and excluded from the term support. Paragraph (f)(9) of this section provides examples of the application of this paragraph. Types of organizations that, subject to the provisions of this paragraph, generally qualify under section 170(b)(1)(A)(vi) as ''publicly supported'' are publicly or governmentally supported museums of history, art, or science, libraries, community centers to promote the arts, organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama or for some other direct service to the general public.

(2) *Determination whether an organization is ''publicly supported''; 33⅓ percent support test.* An organization is publicly supported if the total amount of support (see paragraphs (f)(6), (7), and (8) of this section) that the organization normally (see paragraph (f)(4)(i) of this section) receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33⅓ percent of the total support normally received by the organization. See paragraph (f)(9) *Example 1* of this section.

(3) *Determination whether an organization is ''publicly supported''; facts and circumstances test.* Even if an organization fails to meet the 33⅓ percent support test, it is publicly supported if it normally receives a substantial part of its support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, and meets the other requirements of this paragraph (f)(3). In order to satisfy the facts and circumstances test, an organization must meet the requirements of paragraphs (f)(3)(i) and (f)(3)(ii) of this section. In addition, the organization must be in the nature of an organization that is publicly supported, taking into account all relevant facts and circumstances, including the factors listed in paragraphs (f)(3)(iii)(A) through (E) of this section.

(i) *Ten percent support limitation.* The percentage of support (see paragraphs (f)(6), (7) and (8) of this section) normally (see paragraph (f)(4) of this section) received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, must be substantial. For purposes of this paragraph (f)(3), an organization will not be treated as normally receiving a substantial amount of governmental or public support unless the total amount of governmental and public support normally received equals at least 10 percent of the total support normally received by such organization.

(ii) *Attraction of public support.* An organization must be so organized and operated as to attract new and additional public or governmental support on a continuous basis. An organization will be considered to meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other organizations described in section 170(b)(1)(A)(i) through (vi). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or community, consideration will be given to whether the scope of its fundraising activities is reasonable in light of its charitable activities. Consideration will also be given to the fact that an organization may, in its early years of existence, limit the scope of its solicitation to persons deemed most likely to provide seed money in an amount sufficient to enable it to commence its charitable activities and expand its solicitation program.

(iii) In addition to the requirements set forth in paragraphs (f)(3)(i) and (ii) of this section that must be satisfied, all pertinent facts and circumstances, including the following factors, will be taken into consideration in determining whether an organization is ''publicly supported'' within the meaning of paragraph (f)(1) of this section. However, an organization is not generally required to satisfy all of the factors in paragraphs (f)(3)(iii)(A) through (E) of this section. The factors relevant to each case and the weight

accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has been in existence.

(A) *Percentage of financial support.* The percentage of support received by an organization from public or governmental sources will be taken into consideration in determining whether an organization is ''publicly supported.'' The higher the percentage of support above the 10 percent requirement of paragraph (f)(3)(i) of this section from public or governmental sources, the lesser will be the burden of establishing the publicly supported nature of the organization through other factors described in this paragraph (f)(3), while the lower the percentage, the greater will be the burden. If the percentage of the organization's support from public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, such fact will be treated as evidence of compliance with this subdivision if such endowment funds were originally contributed by a governmental unit or by the general public. However, if such endowment funds were originally contributed by a few individuals or members of their families, such fact will increase the burden on the organization of establishing compliance with the other factors described in paragraph (f)(3)(iii) of this section.

(B) *Sources of support.* The fact that an organization meets the requirement of paragraph (f)(3)(i) of this section through support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be taken into consideration in determining whether an organization is ''publicly supported.'' In determining what is a ''representative number of persons,'' consideration will be given to the type of organization involved, the length of time it has been in existence, and whether it limits its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons.

(C) *Representative governing body.* The fact that an organization has a governing body which represents the broad interests of the public, rather than the personal or private interests of a limited number of donors (or persons standing in a relationship to such donors which is described in section 4946(a)(1)(C) through (G)), will be taken into account in determining whether an organization is ''publicly supported.'' An organization will be treated as meeting this requirement if it has a governing body (whether designated in the organization's governing instrument or bylaws as a Board of Directors, Board of Trustees, etc.) which is comprised of public officials acting in their capacities as such; of individuals selected by public officials acting in their capacities as such; of persons having special knowledge or expertise in the particular field or discipline in which the organization is operating; of community leaders, such as elected or appointed officials, clergymen, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community; or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership.

(D) *Availability of public facilities or services; public participation in programs or policies.* (*1*) The fact that an organization is of the type which generally provides facilities or services directly for the benefit of the general public on a continuing basis (such as a museum or library which holds open its building or facilities to the public, a symphony orchestra which gives public performances, a conservation organization which provides educational services to the public through the distribution of educational materials, or an old age home which provides domiciliary or nursing services for members of the general public) will be considered evidence that such organization is ''publicly supported.''

(*2*) The fact that an organization is an educational or research institution which regularly publishes scholarly studies that are widely used by colleges and universities or by members of the general public will also be considered evidence that such organization is ''publicly supported.''

(*3*) Similarly, the following factors will also be considered evidence that an organization is ''publicly supported'':

(*i*) The participation in, or sponsorship of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders.

(*ii*) The maintenance of a definitive program by an organization to accomplish its charitable work in the community, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs.

(*iii*) The receipt of a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.

(E) *Additional factors pertinent to membership organizations.* The following are additional factors to be considered in determining whether a membership organization is ''publicly supported'':

(*1*) Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities).

(*2*) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons.

(*3*) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations. See *Examples 2* through *5* contained in paragraph (f)(9) of this section for illustrations of this paragraph (f)(3).

(4) *Definition of normally; general rule*—(i) *Normally; 33⅓ percent support test.* An organization meets the 33⅓ percent support test for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the 4 taxable years immediately preceding the current taxable year, the organization meets the 33⅓ percent support test on an aggregate basis.

(ii) *Normally; facts and circumstances test.* An organization meets the facts and circumstances test for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the 4 taxable years immediately preceding the current taxable year, the organization meets the facts and circumstances test on an aggregate basis. In the case of paragraphs (f)(3)(iii)(A) and (B) of this section, facts pertinent to the 5-year period may also be taken into consideration. The combination of factors set forth in paragraphs (f)(3)(iii)(A) through (E) of this section that an organization ''normally'' must meet does not have to be the same for each 5-year period so long as there exists a sufficient combination of factors to show compliance with the facts and circumstances test.

(iii) *Special rule*. The fact that an organization has normally met the requirements of the 33⅓ percent support test for a current taxable year, but is unable normally to meet such requirements for a succeeding taxable year, will not in itself prevent such organization from meeting the facts and circumstances test for such succeeding taxable year.

(iv) *Example*. The application of paragraphs (f)(4)(i), (ii), and (iii) of this section may be illustrated by the following example:

Example. (i) X is recognized as an organization described in section 501(c)(3). On the basis of support received during taxable years 2008, 2009, 2010, 2011 and 2012, it meets the 33⅓ percent support test for taxable year 2012 (the current taxable year). X also meets the 33⅓ support test for 2013, as the immediately succeeding taxable year.

(ii) In taxable years 2009, 2010, 2011, 2012 and 2013, in the aggregate, X does not receive at least 33⅓ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X still meets the 33⅓ percent support test for taxable year 2013 based on the aggregate support received for taxable years 2008 through 2012.

(iii) In taxable years 2010, 2011, 2012, 2013 and 2014, in the aggregate, X does not receive at least 33⅓ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X does not meet the 33⅓ percent support test for taxable year 2014.

(iv) Based on the aggregate support and other factors listed in paragraphs (f)(3)(iii)(A) through (E) of this section for taxable years 2009, 2010, 2011, 2012, and 2013, X meets the facts and circumstances test for taxable year 2013 and for taxable year 2014 (as the immediately succeeding taxable year). Therefore, X is still an organization described in section 170(b)(1)(A)(vi) for taxable year 2014, even though X did not meet the 33⅓ percent support test for that year.

(v) *Normally; first five years of an organization's existence*. (A) An organization meets the 33⅓ public support test or the facts and circumstances test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the 33⅓ percent support test or the facts and circumstances test during that period. With respect to such organization's sixth taxable year, the organization shall be described in section 170(b)(1)(A)(vi) if it meets the 33⅓ percent support test or the facts and circumstances test under the definitions of normally set forth in paragraphs (f)(4)(i) through (iii) of this section for its sixth taxable year (based on support received in its second through sixth taxable years), or for its fifth taxable year (based on support received in its first through fifth taxable years).

(B) *Basic consideration*. In determining whether an organization can reasonably be expected (within the meaning of paragraph (f)(4)(v)(A) of this section) to meet the requirements of the 33⅓ percent support test or the facts and circumstances test during its first five taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as can reasonably be expected to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. The information to be considered for this purpose shall consist of all pertinent facts and circumstances relating to the requirements set forth in paragraph (f)(3) of this section.

(vi) *Example*. The application of paragraph (f)(4)(v) of this section may be illustrated by the following example:

Example. (i) Organization Y was formed in January 2008, and uses a December 31 taxable year. After September 9, 2008, and before December 31, 2008, Organization Y filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in sections 170(b)(1)(A)(vi) and 509(a)(1). In its application, Organization Y established that it can reasonably be expected to operate as a public charity under paragraph (f)(4)(v) of this section. Subsequently, Organization Y received a ruling or determination letter that it is an organization described in section 501(c)(3) and sections 170(b)(1)(A)(vi) and 509(a)(1) effective as of the date of its formation.

(ii) Organization Y is described in sections 170(b)(1)(A)(vi) and 509(a)(1) for its first 5 taxable years (the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization Y can qualify as a public charity beginning with the taxable year ending December 31, 2013, if Organization Y can meet the requirements of paragraphs (f)(2) through (3) of this section or § 1.509(a)–3T(a) through (b) for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(5) *Determinations on foundation classification and reliance*. (i) A ruling or determination letter that an organization is described in section 170(b)(1)(A)(vi) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 170(b)(1)(A)(vi). The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) may be revoked if, upon examination, the organization has not met the requirements of paragraph (f) of this section. The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements of fact or if such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an organization is described in section 170(b)(1)(A)(vi) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(ii) *Status of grantors or contributors*. For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grantors or contributors may rely upon a determination letter or ruling that an organization is described in section 170(b)(1)(A)(vi) until the Internal Revenue Service publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, ''Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,'' which can be searched at *www.irs.gov*). For this purpose, grantors or contributors also may rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 170(b)(1)(A)(vi) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification.

(6) *Definition of support; meaning of general public*—(i) *In general*. In determining whether the 33⅓ percent support test or the 10 percent support limitation described in paragraph (f)(3)(i) of this section is met, contributions by an individual, trust, or corporation shall be taken into account as *support* from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such

individual, trust, or corporation during the period described in paragraphs (f)(4)(i) or (ii) of this section does not exceed 2 percent of the organization's total support for such period, except as provided in paragraph (f)(6)(ii) of this section. Therefore, any contribution by one individual will be included in full in the denominator of the fraction determining the 33⅓ percent support or the 10 percent support limitation, but will be includible in the numerator of such fraction only to the extent that such amount does not exceed 2 percent of the denominator. In applying the 2 percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor that is described in section 4946(a)(1)(C) through (G) and the regulations relating to section 4946(a)(1)(C) through (G) shall be treated as made by one person. The 2 percent limitation shall not apply to support received from governmental units referred to in section 170(c)(1) or to contributions from organizations described in section 170(b)(1)(A)(vi), except as provided in paragraph (f)(6)(v) of this section. For purposes of paragraphs (f)(2), (f)(3)(i) and (f)(7)(iii)(A)(*2*) of this section, the term *indirect contributions from the general public* includes contributions received by the organization from organizations (such as section 170(b)(1)(A)(vi) organizations) that normally receive a substantial part of their support from direct contributions from the general public, except as provided in paragraph (f)(6)(v) of this section. See the examples in paragraph (f)(9) of this section for the application of this paragraph (f)(6)(i). For purposes of this paragraph (f), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513–4) in the form of money or property (but not services).

(ii) *Exclusion of unusual grants.* (A) For purposes of applying the 2 percent limitation described in paragraph (f)(6)(i) of this section to determine whether the 33⅓ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable support fraction if such contributions meet the requirements of paragraph (f)(6)(iii) of this section. The exclusion provided by this paragraph (f)(6)(ii) is generally intended to apply to substantial contributions or bequests from disinterested parties, which contributions or bequests—

(*1*) Are attracted by reason of the publicly supported nature of the organization;

(*2*) Are unusual or unexpected with respect to the amount thereof; and

(*3*) Would, by reason of their size, adversely affect the status of the organization as normally being publicly supported for the applicable period described in paragraph (f)(4) of this section.

(B) In the case of a grant (as defined in § 1.509(a)–3(g)) that meets the requirements of this paragraph (f)(6)(ii), if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item of gross investment income may be excluded under this paragraph (f)(6). The provisions of this paragraph (f)(6) shall apply to exclude unusual grants made during any of the applicable periods described in paragraph (f)(4) or (f)(6) of this section. See paragraph (f)(6)(iv) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (f)(6).

(iii) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (f)(6)(ii) of this section all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. For some of the factors similar to the factors to be considered, see § 1.509(a)–3T(c)(4).

(iv) *Grantors and contributors.* Prior to the making of any grant or contribution that will allegedly meet the requirements for exclusion under paragraph (f)(6)(ii) of this section, a potential grantee organization may request a determination whether such grant or contribution may be so excluded. Requests for such determination may be filed by the grantee organization. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (f)(6)(iii) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (f)(6)(ii) of this section.

(v) *Grants from public charities.* Pursuant to paragraph (f)(6)(i) of this section, contributions received from a governmental unit or from a section 170(b)(1)(A)(vi) organization are not subject to the 2 percent limitation described in paragraph (f)(6)(i) of this section unless such contributions represent amounts which have been expressly or impliedly earmarked by a donor to such governmental unit or section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the particular organization claiming section 170(b)(1)(A)(vi) status. See § 1.509(a)–3(j)(3) for examples illustrating the rules of this paragraph (f)(6)(v).

(*7*) *Definition of support; special rules and meaning of terms*—(i) *Definition of support.* For purposes of this paragraph (f)(*7*), the term ''support'' shall be as defined in section 509(d) (without regard to section 509(d)(2)). The term ''support'' does not include—

(A) Any amounts received from the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). In general, such amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of such purpose or function (other than through the production of income); or

(B) Contributions of services for which a deduction is not allowable.

(ii) For purposes of the 33⅓ percent support test and the 10 percent support limitation in paragraph (f)(3)(i) of this section, all amounts received that are described in paragraphs (f)(7)(i)(A) or (B) of this section are to be excluded from both the numerator and the denominator of the fractions determining compliance with such tests, except as provided in paragraph (f)(7)(iii) of this section.

(iii) *Organizations dependent primarily on gross receipts from related activities.* (A) Notwithstanding the provisions of paragraph (f)(7)(i) of this section, an organization will not be treated as satisfying the 33⅓ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section if it receives—

(*1*) Almost all of its support (as defined in section 509(d)) from gross receipts from related activities; and

(*2*) An insignificant amount of its support from governmental units (without regard to amounts referred to in paragraph (f)(7)(i)(A) of this section) and contributions made directly or indirectly by the general public.

(B) *Example.* The application of this paragraph (f)(7)(iii) may be illustrated by the following example:

Example. Z, an organization described in section 501(c)(3), is controlled by A, its

president. Z received $500,000 during the period consisting of the current taxable year and the four immediately preceding taxable years under a contract with the Department of Transportation, pursuant to which Z has engaged in research to improve a particular vehicle used primarily by the Federal government. During this same period, the only other support received by Z consisted of $5,000 in small contributions primarily from Z's employees and business associates. The $500,000 amount constitutes support under sections 509(d)(2) and 509(a)(2)(A). Under these circumstances, Z meets the conditions of paragraphs (f)(7)(iii)(A)(*1*) and (*2*) of this section and will not be treated as meeting the requirements of either the 33⅓ percent support test or the facts and circumstances test. As to the rules applicable to organizations that fail to qualify under section 170(b)(1)(A)(vi) because of the provisions of this paragraph (f)(7)(ii), see section 509(a)(2) and the accompanying regulations. For the distinction between gross receipts (as referred to in section 509(d)(2)) and gross investment income (as referred to in section 509(d)(4)), see § 1.509(a)–3(m).

(iv) *Membership fees*. For purposes of this paragraph (f)(7), the term *support* shall include ''membership fees'' within the meaning of § 1.509(a)–3(h) (that is, if the basic purpose for making a payment is to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities).

(8) *Support from a governmental unit*. (i) For purposes of the 33⅓ percent support test and the 10 percent support limitation described in paragraph (f)(3)(i) of this section, the term *support from a governmental unit* includes any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant. However, such amounts will not constitute support from a governmental unit for such purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions as provided in paragraph (f)(7)(i)(A) of this section.

(ii) For purposes of paragraph (f)(8)(i) of this section, any amount paid by a governmental unit to an organization is not to be treated as received from the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) (within the meaning of paragraph (f)(7)(i)(A) of this section) if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing such service or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. For example—

(A) Amounts paid for the maintenance of library facilities which are open to the public;

(B) Amounts paid under government programs to nursing homes or homes for the aged in order to provide health care or domiciliary services to residents of such facilities; and

(C) Amounts paid to child placement or child guidance organizations under government programs for services rendered to children in the community, are considered payments the purpose of which is primarily to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances such that the amount would be treated as a ''grant'' within the meaning of § 1.509(a)–3(g) will generally constitute ''support from a governmental unit'' described in this paragraph (f)(8), rather than an amount described in paragraph (f)(7)(i)(A) of this section.

(9) *Examples*. The application of paragraphs (f)(1) through (8) of this section may be illustrated by the following examples:

Example 1. (i) M is recognized as an organization described in section 501(c)(3). For the years 2008 through 2012 (the applicable period with respect to the taxable year 2012 under paragraph (f)(4) of this section), M received support (as defined in paragraphs (f)(6) through (8) of this section) of $600,000 from the following sources:

Investment income	$300,000
City R (a governmental unit described in section 170(c)(1))	40,000
United Fund (an organization described in section 170(b)(1)(A)(vi))	40,000
Contributions	220,000
Total support	$600,000

(ii) With respect to the taxable year 2012, M's public support is computed as follows:

Support from a governmental unit described in section 170(c)(1)	$40,000
Indirect contributions from the general public (United Fund)	40,000
Contributions by various donors (no one having made contributions that total in excess of $12,000—2 percent of total support)	50,000
Six contributions (each in excess of $12,000—2 percent total support) 6 × $12,000	72,000
	$202,000

(iii) M's support from governmental units referred to in section 170(c)(1) and from direct and indirect contributions from the general public (as defined in paragraph (f)(6) of this section) with respect to the taxable year 2012 normally exceeds 33⅓ percent of M's total support ($202,000/$600,000 = 33.67 percent) for the applicable period (2008 through 2012). M meets the 33⅓ percent support test with respect to 2012 and is therefore publicly supported for the taxable years 2012 and 2013.

Example 2. N is recognized as an organization described in section 501(c)(3). It was created to maintain public gardens containing botanical specimens and displaying statuary and other art objects. The facilities, works of art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract a substantial number of visitors each year. For the current taxable year and the four taxable years immediately preceding the current taxable year, 95 percent of the organization's total support was received from investment income from its original endowment. N also maintains a membership society that is supported by members of the general public who wish to contribute to the upkeep of the gardens by paying a small annual membership fee. Over the 5-year period in question, these fees from the general public constituted the remaining 5 percent of the organization's total support for such period. Under these circumstances, N does not meet the 33⅓ percent support test for its current taxable year. Furthermore, because only 5 percent of its total support is, with respect to the current taxable year, normally received from the general public, N does not satisfy the 10 percent support limitation described in paragraph (f)(3)(i) of this section and therefore does not qualify as publicly supported under the facts and circumstances test. Because N has failed to satisfy the 10 percent support limitation under paragraph (f)(3)(i) of this section, none of the other requirements or factors set forth in paragraphs (f)(3)(iii)(A) through (E) of this section can be considered in determining whether N qualifies as a publicly supported organization. For its current taxable year, N therefore is not an organization described in section 170(b)(1)(A)(vi).

Example 3. (i) O, an art museum, is recognized as an organization described in section 501(c)(3). In 1930, O was founded in S City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees that originally consisted almost entirely of members of the founding family. However, since 1945, members of the founding family or persons standing in a relationship to the members of such family described in section 4946(a)(1)(C) through (G) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of S City from a variety of professions and occupations who represent the interests and views of the people of S City in the activities carried on by the

organization rather than the personal or private interests of the founding family. O solicits contributions from the general public and for the current taxable year and each of the four taxable years immediately preceding the current taxable year, O has received total contributions (in small sums of less than $100, none of which exceeds 2 percent of O's total support for such period) in excess of $10,000. These contributions from the general public (as defined in paragraph (f)(6) of this section) represent 25 percent of the organization's total support for such 5-year period. For this same period, investment income from several large endowment funds has constituted 75 percent of O's total support. O expends substantially all of its annual income for its exempt purposes and thus depends upon the funds it annually solicits from the public as well as its investment income in order to carry out its activities on a normal and continuing basis and to acquire new works of art. O has, for the entire period of its existence, been open to the public and more than 300,000 people (from S City and elsewhere) have visited the museum in each of the current taxable year and the four most recent taxable years.

(ii) Under these circumstances, O does not meet the 33⅓ percent support test for its current year because it has received only 25 percent of its total support for the applicable 5-year period from the general public. However, under the facts set forth above, O has met the 10 percent support limitation under paragraph (f)(3)(i) of this section, as well as the requirements of paragraph (f)(3)(ii) of this section. Under all of the facts set forth in this example, O is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying paragraphs (f)(3)(i) and (ii) of this section and the factors set forth in paragraphs (f)(3)(iii)(A) through (D) of this section. O is therefore publicly supported for its current taxable year and the immediately succeeding taxable year.

Example 4. (i) In 1960, the P Philharmonic Orchestra was organized in T City through the combined efforts of a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. P is recognized as an organization described in section 501(c)(3). The orchestra is composed of professional musicians who are paid by the association. Twelve performances open to the public are scheduled each year. A small admission fee is charged for each of these performances. In addition, several performances are staged annually without charge. During the current taxable year and the four taxable years immediately preceding the current taxable year, P has received separate contributions of $200,000 each from A and B (not members of a single family) and support of $120,000 from the T Community Chest, a public federated fundraising organization operating in T City. P depends on these funds in order to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fundraising campaign in an attempt to expand its activities for the coming years. P is governed by a Board of Directors comprised of 5 individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local chamber of commerce currently serve on P's Board and represent the interests and views of the community in the activities carried on by P.

(ii) With respect to P's current taxable year, P's sources of support are computed on the basis of the current taxable year and the four taxable years immediately preceding the current taxable year, as follows:

Contributions	$520,000
Receipts from performances	100,000
Total support	$620,000
Less:	
Receipts from performances (excluded under paragraph (f)(7)(i)(A) of this section)	100,000
Total support for purposes of paragraphs (f)(2) and (f)(3)(i) of this section	$520,000

(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, P's support is computed as follows:

T Community Chest (indirect support from the general public)	$120,000
Two contributions (each in excess of $10,400—2 percent of total support) 2 × $10,400	20,800
Total	$140,800

(iv) P's support from the direct and indirect contributions from the general public does not meet the 33⅓ percent support test ($140,800/$520,000 = 27 percent of total support). However, because P receives 27 percent of its total support from the general public, it meets the 10 percent support limitation under paragraph (f)(3)(i) of this section. P also meets the requirements of paragraph (f)(3)(ii) of this section. As a result of satisfying these requirements and the factors set forth in paragraphs (f)(3)(iii)(A) through (D) of this section, P is considered to meet the facts and circumstances test and therefore qualifies as a publicly supported organization under paragraph (f)(1) of this section for its current taxable year and the immediately succeeding taxable year.

Example 5. (i) Q is recognized as an organization described in section 501(c)(3). It is a philanthropic organization founded in 1965 by C for the purpose of making annual contributions to worthy charities. C created Q as a charitable trust by the transfer of appreciated securities worth $500,000 to Q. Pursuant to the trust agreement, C and two other members of his family are the sole trustees of Q and are vested with the right to appoint successor trustees. In each of the current taxable year and the four taxable years immediately preceding the current taxable year, Q received $15,000 in investment income from its original endowment. Each year Q makes a solicitation for funds by operating a charity ball at C's residence. Guests are invited and requested to make contributions of $100 per couple. During the 5-year period at issue, $15,000 was received from the proceeds of these events. C and his family have also made contributions to Q of $25,000 over the 5-year period at issue. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

(ii) Q's sources of support for the current taxable year and the four taxable years immediately preceding the current taxable year as follows:

Investment income	$60,000
Contributions	40,000
Total support	$100,000

(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, Q's support is computed as follows:

Contributions from the general public	$15,000
One contribution (in excess of $2,000—2 percent of total support) 1 × $2,000	2,000
Total	$17,000

(iv) Q's support from the general public does not meet the 33⅓ percent support test ($17,000/$100,000 = 17 percent of total support). Thus, Q's classification as a ''publicly supported'' organization depends on whether it meets the requirements of the facts and circumstances test. Even though it satisfies the 10 percent support limitation under paragraph (f)(3)(i) of this section, its method of solicitation makes it questionable whether Q satisfies the requirements of paragraph (f)(3)(ii) of this section. Because of its method of operating, Q also has a greater burden of establishing its publicly supported nature under paragraph (f)(3)(iii)(A) of this section. Based upon the foregoing and upon Q's failure to receive favorable consideration under the remaining factors set forth in paragraphs (f)(3)(iii)(B), (C) and (D) of this section, Q does not satisfy the facts and circumstances test.

(10) *Community trust; introduction.* Community trusts have often been established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area, and often such contributions have come initially from a small number of donors. While the community trust generally has a governing body comprised of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds, which are subject to varying degrees of control by the governing body. To qualify as a ''publicly supported'' organization, a community trust must meet the 33⅓ percent support test, or, if it cannot meet that test, be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test. Such facts and circumstances test includes a requirement of attraction of public

support in paragraph (f)(3)(ii) of this section which, as applied to community trusts, generally will be satisfied if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust companies, through attorneys or other professional persons, or in other appropriate ways that call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust is not required to engage in periodic, community-wide, fundraising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a community chest or united fund. Paragraph (f)(11) of this section provides rules for determining the extent to which separate trusts or funds may be treated as component parts of a community trust, fund or foundation (herein collectively referred to as a ''community trust'', and sometimes referred to as an ''organization'') for purposes of meeting the requirements of this paragraph for classification as a publicly supported organization. Paragraph (f)(12) of this section contains rules for trusts or funds that are prevented from qualifying as component parts of a community trust by paragraph (f)(11) of this section.

(11) *Community trusts; requirements for treatment as a single entity*—(i) *General rule.* For purposes of sections 170, 501, 507, 508, 509, and Chapter 42, any organization that meets the requirements contained in paragraphs (f)(11)(iii) through (iv) of this section will be treated as a single entity, rather than as an aggregation of separate funds, and except as otherwise provided, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) which meet the requirements of paragraph (f)(11)(ii) of this section will be treated as component parts of such organization.

(ii) *Component part of a community trust.* In order to be treated as a component part of a community trust referred to in this paragraph (f)(11) (rather than as a separate trust or not-for-profit corporation or association), a trust or fund:

(A) Must be created by a gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under this paragraph (f)(11); and

(B) May not be directly or indirectly subjected by the transferor to any material restriction or condition (within the meaning of § 1.507–2T(a)(7)) with respect to the transferred assets. For purposes of this paragraph (f)(11)(ii)(B), if the transferor is not a private foundation, the provisions of § 1.507–2T(a)(7) shall be applied to the trust or fund as if the transferor were a private foundation established and funded by the person establishing the trust or fund and such foundation transferred all its assets to the trust or fund. Any transfer made to a fund or trust which is treated as a component part of a community trust under this paragraph (f)(11)(ii) will be treated as a transfer made ''to'' a ''publicly supported'' community trust for purposes of section 170(b)(1)(A) and 507(b)(1)(A) if such community trust meets the requirements of section 170(b)(1)(A)(vi) as a ''publicly supported'' organization at the time of the transfer, except as provided in paragraph (f)(4)(v)(B) of this section or § 1.508–1(b)(4) and (6) (relating, generally, to reliance by grantors and contributors). See also paragraphs (f)(12)(ii) and (iii) of this section for special provisions relating to split-interest trusts and certain private foundations described in section 170(b)(1)(F)(iii).

(iii) *Name.* The organization must be commonly known as a community trust, fund, foundation or other similar name conveying the concept of a capital or endowment fund to support charitable activities (within the meaning of section 170(c)(1) or (2)(B)) in the community or area it serves.

(iv) *Common instrument.* All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the ''governing instrument''), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust's governing instrument or master trust or agency agreement will satisfy the requirements of this paragraph (f)(11)(iv). In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of this paragraph (f)(11)(iv).

(v) *Common governing body.* (A) The organization must have a common governing body or distribution committee (herein referred to as the ''governing body'') which either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all of the funds exclusively for charitable purposes (within the meaning of section 170(c)(1) or (2)(B)). For purposes of this paragraph (f)(11)(v), a fund is designated for specified beneficiaries only if no person is left with the discretion to direct the distribution of the fund.

(B) *Powers of modification and removal.* The fact that the exercise of any power described in this paragraph (f)(11)(v)(B) is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of this paragraph (f)(11)(v)(B). Except as provided in paragraph (f)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise—

(*1*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(*2*) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(*3*) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (f)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

(C) *Transitional rule*—(*1*) Notwithstanding paragraph (f)(11)(v)(*B*) of this section, if a community trust meets the requirements of paragraph (f)(11)(v)(C)(*3*) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977, and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority):

(*i*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the

judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(*ii*) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

(*2*) The necessity for the governing body to obtain the approval of a participating trustee to exercise the powers described in paragraph (f)(11)(v)(C)(*1*) of this section shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(*3*) Paragraph (f)(11)(v)(C)(*1*) of this section shall not apply unless the community trust meets the requirements of paragraph (f)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (f)(11)(v)(C)(*1*) of this section, by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of paragraph (f)(11)(v)(B) of this section.

(D) *Inconsistent State law*—(*1*) For purposes of paragraphs (f)(11)(v)(B)(*1*), (*2*), or (*3*), (f)(11)(v)(C)(*1*)(i) or (ii) or (f)(11)(v)(E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing instrument and were accepted without limitation under an instrument of transfer, then the community trust will be treated as meeting the requirements of such a provision if it meets such requirements to the fullest extent possible consistent with State law (if such power is or had been so expressly granted).

(*2*) For example, if, under the conditions of paragraph (f)(11)(v)(D)(*1*) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(*3*) In addition, if, for example, under the conditions of paragraph (f)(11)(v)(D)(*1*) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers.* The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraphs (f)(11)(v)(B), (C) and (D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return.* In addition to the requirements of paragraphs (f)(11)(v)(B), (C), (D) or (E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the Internal Revenue Service will examine carefully whether the governing body has, in fact, committed itself to take the appropriate steps. For purposes of this paragraph (f)(11)(v)(F), any income that has been designated by the donor of the gift or bequest to which such income is attributable as being available only for the use or benefit of a broad charitable purpose, such as the encouragement of higher education or the promotion of better health care in the community, will be treated as unrestricted. However, any income that has been designated for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies, the members of which are readily ascertainable and are less than five in number, will be treated as restricted.

(vi) *Common reports.* The organization must prepare periodic financial reports treating all of the funds which are held by the community trust, either directly or in component parts, as funds of the organization.

(12) *Community trusts; treatment of trusts and not-for-profit corporations and associations not included as components.* (i) For purposes of sections 170, 501, 507, 508, 509 and Chapter 42, any trust or not-for-profit corporation or association that is alleged to be a component part of a community trust, but that fails to meet the requirements of paragraph (f)(11)(ii) of this section, shall not be treated as a component part of a community trust and, if a trust, shall be treated as a separate trust and be subject to the provisions of section 501 or section 4947(a)(1) or (2), as the case may be. If such organization is a not-for-profit corporation or association, it will be treated as a separate entity, and, if it is described in section 501(c)(3), it will be treated as a private foundation unless it is described in section 509(a)(1), (2), (3), or (4). In the case of a fund that is ultimately treated as not being a component part of a community trust pursuant to this paragraph (f)(12), if the Forms 990 filed annually by the community trust included financial information with respect to such fund and treated such fund in the same manner as other component parts thereof, such returns filed by the community trust prior to the taxable year in which the Commissioner notifies such fund that it will not be treated as a component part will be treated as its separate return for purpose of Subchapter A of Chapter 61 of Subtitle F, and the first such return filed by the community trust will be treated as the notification required of the separate entity for purposes of section 508(a).

(ii) If a transfer is made in trust to a community trust to make income or

other payments for a period of a life or lives in being or a term of years to any individual or for any noncharitable purpose, followed by payments to or for the use of the community trust (such as in the case of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 or a pooled income fund described in section 642(c)(5)), such trust will be treated as a component part of the community trust upon the termination of all intervening noncharitable interests and rights to the actual possession or enjoyment of the property if such trust satisfies the requirements of paragraph (f)(11) of this section at such time. Until such time, the trust will be treated as a separate trust. If a transfer is made in trust to a community trust to make income or other payments to or for the use of the community trust, followed by payments to any individual or for any noncharitable purpose, such trust will be treated as a separate trust rather than as a component part of the community trust. See section 4947(a)(2) and the regulations relating to section 4947(a)(2) for the treatment of such split-interest trusts. The provisions of this paragraph (f)(12)(ii) provide rules only for determining when a charitable remainder trust or pooled income fund may be treated as a component part of a community trust and are not intended to preclude a community trust from maintaining a charitable remainder trust or pooled income fund. For purposes of grantors and contributors, a pooled income fund of a publicly supported community trust shall be treated no differently than a pooled income fund of any other publicly supported organization.

(iii) An organization described in section 170(b)(1)(F)(iii) will not ordinarily satisfy the requirements of paragraph (f)(11)(ii) of this section because of the unqualified right of the donor to designate the recipients of the income and principal of the trust. Such organization will therefore ordinarily be treated as other than a component part of a community trust under paragraph (f)(12)(i) of this section. However, see section 170(b)(1)(F)(iii) and the regulations relating to section 170(b)(1)(F)(iii) with respect to the treatment of contributions to such organizations.

(13) *Method of accounting.* For purposes of section 170(b)(1)(A)(vi), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which the grantee organization regularly computes its income in keeping its books under section 446.

(14) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) will be treated as meeting the requirements of paragraph (f)(4)(v) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the Internal Revenue Service issued the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (f)(4)(v) of this section shall not apply to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth in § 1.170A–9(e)(4)(i) and (ii) or § 1.509(a)–3(c)(1) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (f)(14) may be illustrated by the following examples:

Example 1. (i) Organization X was formed in January 2004 and uses a June 30 taxable year. Organization X received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a public charity under sections 170(b)(1)(A)(vi) and 509(a)(1) during the five-year advance ruling period that will end on June 30, 2008. This date is within 90 days before September 9, 2008.

(ii) Under the transition rule, Organization X is a public charity described in sections 170(b)(1)(A)(vi) and 509(a)(1) for the taxable years ending June 30, 2004, through June 30, 2008. Organization X does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A–9(e) or § 1.509(a)–3, as in effect prior September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008), for its advance ruling period.

(iii) Organization X can qualify as a public charity beginning with the taxable year ending June 30, 2009, if Organization X can meet the requirements of paragraphs (f)(4)(i) or (ii) of this section or § 1.509(a)–3T(c)(1) for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization X may qualify as a public charity by availing itself of the transition rule contained in paragraph (f)(14)(iii) of this section, which looks to support received by X in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization Y was formed in January 2000, and uses a December 31 taxable year. Organization Y received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a public charity prior to September 9, 2008.

(ii) For taxable year 2008, Organization Y will qualify as publicly supported if it meets the requirements under either paragraphs (f)(4)(i) or (ii) of this section or § 1.509(a)–3T(c)(1) for the five-year period January 1, 2004, through December 31, 2008. Organization Y will also qualify as publicly supported for taxable year 2008 if it meets the requirements under either § 1.170A–9(e)(4)(i) or (ii) or § 1.509(a)–3(c)(1) as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(g) through (j) [Reserved]. For further guidance, see § 1.170A–9(g) through (j).

(k) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraph (f) of this section shall apply to tax years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

■ **Par. 4**. Section 1.507–2 is amended by adding new paragraph (h) to read as follows:

§ 1.507–2 Special rules; transfer to, or operation as, public charity.

* * * * *

(h) *Effective/applicability date.* This section shall apply to tax years beginning before January 1, 2008.

■ **Par. 5**. Section 1.507–2T is added to read as follows:

§ 1.507–2T Special rules; transfer to, or operation as, public charity (temporary).

(a) *Transfer to public charities*—(1) *General rule.* Under section 507(b)(1)(A) a private foundation, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act)

giving rise to liability for tax under chapter 42, may terminate its private foundation status by distributing all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution. Because section 507(a) does not apply to such a termination, a private foundation which makes such a termination is not required to give the notification described in section 507(a)(1). A private foundation that terminates its private foundation status under section 507(b)(1)(A) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(2) *Effect of current ruling.* A private foundation seeking to terminate its private foundation status pursuant to section 507(b)(1)(A) may rely on a ruling or determination letter issued to a potential distributee organization that such distributee organization is an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), (v) or (vi) in accordance with the provisions of § 1.509(a)–7.

(3) *Organizations described in more than one clause of section 170(b)(1)(A).* For purposes of this paragraph and section 507(b)(1)(A), the parenthetical term ''other than in clauses (vii) and (viii)'' shall refer only to an organization that is described only in section 170(b)(1)(A)(vii) or (viii). Thus, an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), (v), or (vi) will not be precluded from being a distributee described in section 507(b)(1)(A) merely because it also appears to meet the description of an organization described in section 170(b)(1)(A) (vii) or (viii).

(4) *Applicability of chapter 42 to foundations terminating under section 507(b)(1)(A).* An organization that terminates its private foundation status pursuant to section 507(b)(1)(A) will remain subject to the provisions of chapter 42 until the distribution of all of its net assets to distributee organizations described in section 507(b)(1)(A) has been completed.

(5) *Return required from organizations terminating private foundation status under section 507(b)(1)(A).*

(i) An organization that terminates its private foundation status under section 507(b)(1)(A) is required to file a return under the provisions of section 6043(b), rather than under the provisions of section 6050.

(ii) An organization that terminates its private foundation status under section 507(b)(1)(A) is not required to comply with section 6104(d) for the taxable year in which such termination occurs.

(6) *Distribution of net assets.* A private foundation will meet the requirement that it ''distribute all of its net assets'' within the meaning of section 507(b)(1)(A) only if it transfers all of its right, title, and interest in and to all of its net assets to one or more organizations referred to in section 507(b)(1)(A).

(7) *Effect of restrictions and conditions upon distributions of net assets*—(i) *In general.* In order to effectuate a transfer of ''all of its right, title, and interest in and to all of its net assets'' within the meaning of paragraph (a)(6) of this section, a transferor private foundation may not impose any material restriction or condition that prevents the transferee organization referred to in section 507(b)(1)(A) (herein sometimes referred to as the ''public charity'') from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes. Whether or not a particular condition or restriction imposed upon a transfer of assets is material (within the meaning of this paragraph (a)(7)) must be determined from all of the facts and circumstances of the transfer. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the owner in fee of the assets it receives from the private foundation;

(B) Whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its exempt purposes;

(C) Whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom; and

(D) Whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor.

(ii) *Independent governing body.* As provided in paragraph (a)(7)(i)(D) of this section, one of the more significant facts and circumstances to be considered in making the determination whether a particular condition or restriction imposed upon a transfer of assets is material within the meaning of this paragraph (a)(7) is whether, and the extent to which, the governing body is organized and operated so as to be independent from the transferor. In turn, the determination as to such factor must be determined from all of the facts and circumstances. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether, and to what extent, members of the governing body are comprised of persons selected by the transferor private foundation or disqualified persons with respect thereto, or are themselves such disqualified persons;

(B) Whether, and to what extent, members of the governing body are selected by public officials acting in their capacities as such; and

(C) How long a period of time each member of the governing body may serve as such. In the case of a transfer that is to a community trust, the community trust shall meet this paragraph (a)(7)(ii)(C) if, with respect to terms of office beginning after the date of transfer:

(*1*) its governing body is comprised of members who may serve a period of not more than ten consecutive years; and

(*2*) Upon completion of a period of service (beginning before or after the date of transfer), no member may serve again within a period consisting of the lesser of 5 years or the number of consecutive years the member has immediately completed serving.

(iii) *Factors not adversely affecting determination.* The presence of some or all of the following factors will not be considered as preventing the transferee ''from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes'' (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Name.* The fund is given a name or other designation which is the same as or similar to that of the transferor private foundation or otherwise memorializes the creator of the foundation or his family.

(B) *Purpose.* The income and assets of the fund are to be used for a designated purpose or for one or more particular section 509(a)(1), (2), or (3) organizations, and such use is consistent with the charitable, educational, or other basis for the exempt status of the public charity under section 501(c)(3).

(C) *Administration.* The transferred assets are administered in an identifiable or separate fund, some or all of the principal of which is not to be distributed for a specified period, if the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the legal and equitable owner of the fund and the governing body exercises ultimate and direct authority and control over such

fund, as, for example, a fund to endow a chair at a university or a medical research fund at a hospital. In the case of a community trust, the transferred assets must be administered in or as a component part of the community trust within the meaning of § 1.170A–9T(f)(11).

(D) *Restrictions on disposition.* The transferor private foundation transfers property the continued retention of which by the transferee is required by the transferor if such retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of such property, as, for example, where a private foundation transfers a woodland preserve which is to be maintained by the public charity as an arboretum for the benefit of the community. Such a restriction does not include a restriction on the disposition of an investment asset or the distribution of income.

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee ''from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes'' (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Distributions.* (*1*) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect thereto, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as donor), reserves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular section 509(a)(1), (2), or (3) organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The Internal Revenue Service will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and circumstances, including, but not limited to, the factors contained in paragraphs (a)(7)(iv)(A)(*2*) and (*3*) of this section.

(*2*) The presence of some or all of the following factors will indicate that the reservation of such a right does not exist:

(*i*) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity).

(*ii*) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines.

(*iii*) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity.

(*iv*) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or similar types of organizations or charitable needs as those recommended by the donor.

(*v*) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(*3*) The presence of some or all of the following factors will indicate the reservation of such a right does exist:

(*i*) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed.

(*ii*) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(7)(iv)(A)(*2*)(*i*) or (*ii*) of this section are not present.

(*iii*) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund.

(*iv*) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

(B) Other action or withholding of action. The terms of the transfer agreement, or any expressed or implied understanding, required the public charity to take or withhold action with respect to the transferred assets which is not designed to further one or more of the exempt purposes of the public charity, and such action or withholding of action would, if performed by the transferor private foundation with respect to such assets, have subjected the transferor to tax under chapter 42 (other than with respect to the minimum investment return requirement of section 4942(e)).

(C) *Assumption of leases, contractual obligations, or liabilities.* The public charity assumes leases, contractual obligations, or liabilities of the transferor private foundation, or takes the assets thereof subject to such liabilities (including obligations under commitments or pledges to donees of the transferor private foundation), for purposes inconsistent with the purposes or best interests of the public charity, other than the payment of the transferor's chapter 42 taxes incurred prior to the transfer to the public charity to the extent of the value of the assets transferred.

(D) *Retention of investment assets.* The transferee public charity is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain any securities or other investment assets transferred to it by the private foundation. In a case where such transferred assets consistently produce a low annual return of income, the Internal Revenue Service will examine carefully whether the transferee is required by any such restriction or agreement to retain such assets.

(E) *Right of first refusal.* An agreement is entered into in connection with the transfer of securities or other property which grants directly or indirectly to the transferor private foundation or any disqualified person with respect thereto a right of first refusal with respect to the transferred securities or other property when and if disposed of by the public charity, unless such securities or other property was acquired by the transferor private foundation subject to such right of first refusal prior to October 9, 1969.

(F) *Relationships.* An agreement is entered into between the transferor private foundation and the transferee public charity which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the public charity, such as continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to the investments or other property transferred to the public charity (other than a relationship with a trustee, custodian, or agent for a

community trust acting as such). The transfer of property to a public charity subject to contractual obligations which were established prior to November 11, 1976, between the transferor private foundation and persons other than disqualified persons with respect to such foundation will not be treated as prohibited under the preceding sentence, but only if such contractual obligations were not entered into pursuant to a plan to terminate the private foundation status of the transferor under section 507(b)(1)(A) and if the continuation of such contractual obligations is in the best interests of the public charity.

(G) *Other conditions.* Any other condition is imposed on action by the public charity which prevents it from exercising ultimate control over the assets received from the transferor private foundation for purposes consistent with its exempt purposes.

(v) *Examples.* The provisions of this paragraph (a)(7) may be illustrated by the following examples:

Example 1. The M Private Foundation transferred all of its net assets to the V Cancer Institute, a public charity described in section 170(b)(1)(A)(iii). Prior to the transfer, M's activities consisted of making grants to hospitals and universities to further research into the causes of cancer. Under the terms of the transfer, V is required to keep M's assets in a separate fund and use the income and principal to further cancer research. Although the assets may be used only for a limited purpose, this purpose is consistent with and in furtherance of V's exempt purposes, and does not prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 2. The N Private Foundation transferred all of its net assets to W University, a public charity described in section 170(b)(1)(A)(ii). Under the terms of the transfer, W is required to use the income and principal to endow a chair at the university to be known as the ''John J. Doe Memorial Professorship'', named after N's creator. Although the transferred assets are to be used for a specified purpose by W, this purpose is in furtherance of W's exempt educational purposes, and there are no conditions on investment or reinvestment of the principal or income. The use of the name of the foundation's creator for the chair is not a restriction which would prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 3. The O Private Foundation transferred all of its net assets to X Bank as trustee for the Q Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, X is to hold the assets in trust for Q and is directed to distribute the income annually to the Y Church, a public charity described in section 170(b)(1)(A)(i). The distribution of income to Y Church is consistent with Q's exempt purposes. If the trust created by this transfer otherwise meets the requirements of § 1.170A–9T(f)(11) as a component part of the Q Community Trust, the assets transferred by O to X will be treated as distributed to one or more public charities within the meaning of section 507(b)(1)(A). The direction to distribute the income to Y Church meets the conditions of paragraph (a)(7)(iii)(B) of this section and will therefore not disqualify the transfer under section 507(b)(1)(A).

Example 4. (i) The P Private Foundation transferred all of its net assets to Z Bank as trustee for the R Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, Z is to hold the assets in trust for R and distribute the income to those public charities described in section 170(b)(1)(A)(i) through (vi) that are designated by B, the creator of P. R's governing body has no authority during B's lifetime to vary B's direction. Under the terms of the transfer, it is intended that Z retain the transferred assets in their present form for a period of 20 years, or until the date of B's death if it occurs before the expiration of such period. Upon the death of B, R will have the power to distribute the income to such public charities as it selects and may dispose of the corpus as it sees fit.

(ii) Under paragraph (a)(7)(iv)(A) or (D) of this section, as a result of the restrictions imposed with respect to the transferred assets, there has been no distribution of all P's net assets within the meaning of section 507(b)(1)(A) at the time of the transfer. In addition, P has not transferred its net assets to a component part of R Community Trust, but rather to a separate trust described in § 1.170A–9T(f)(12).

(b) *Operation as a public charity*—(1) *In general.* Under section 507(b)(1)(B), an organization can terminate its private foundation status if the organization—

(i) Meets the requirements of section 509(a)(1), (2) or (3) for a continuous period of 60 calendar months beginning with the first day of any taxable year that begins after December 31, 1969;

(ii) In compliance with section 507(b)(1)(B)(ii) and paragraph (b)(3) of this section, properly notifies the Internal Revenue Service, in such manner as may be provided by published guidance, publication, form or instructions, before the commencement of such 60-month period, that it is terminating its private foundation status; and

(iii) Properly establishes immediately after the expiration of such 60-month period that such organization has complied with the requirements of section 509(a)(1), (2) or (3) during the 60-month period, in the manner described in paragraph (b)(4) of this section.

(2) *Relationship of section 507(b)(1)(B) to section 507(a), (c), and (g).* Because section 507(a) does not apply to a termination described in section 507(b)(1)(B), a private foundation's notification that it is commencing a termination pursuant to section 507(b)(1)(B) will not be treated as a notification described in section 507(a) even if the private foundation does not successfully terminate its private foundation status pursuant to section 507(b)(1)(B). A private foundation that terminates its private foundation status under section 507(b)(1)(B) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(3) *Notification of termination.* In order to comply with the requirements under section 507(b)(1)(B)(ii), an organization shall before the commencement of the 60-month period under section 507(b)(1)(B)(i) notify the Internal Revenue Service, in such manner as may be provided by published guidance, publication, form or instructions, of its intention to terminate its private foundation status. Such notification shall contain the following information:

(i) The name and address of the private foundation.

(ii) Its intention to terminate its private foundation status.

(iii) The Code section under which it seeks classification (section 509(a)(1), (2) or (3)).

(iv) If section 509(a)(1) is applicable, the clause of section 170(b)(1)(A) involved.

(v) The date its regular taxable year begins.

(vi) The date of commencement of the 60-month period.

(4) *Establishment of termination.* In order to comply with the requirements under section 507(b)(1)(B)(iii), an organization shall within 90 days after the expiration of the 60-month period file such information with the Internal Revenue Service, in such manner as may be provided by published guidance, publication, form or instructions, as is necessary to make a determination as to the organization's status as an organization described under section 509(a)(1), (2) or (3) and the accompanying regulations. See paragraph (c) of this section as to the information required to be submitted under this paragraph (b)(4).

(5) *Incomplete information.* The failure to supply, within the required time, all of the information required by paragraph (b)(3) or (4) of this section is not alone sufficient to constitute a failure to satisfy the requirements of section 507(b)(1)(B). If the information that is submitted within the required time is incomplete and the organization supplies the necessary additional information at the request of the

Commissioner within the additional time period allowed by him, the original submission will be considered timely.

(6) *Application of special rules and filing requirements.* An organization that has terminated its private foundation status under section 507(b)(1)(B) is not required to comply with the special rules set forth in section 508(a) and (b). Such organization is also not required to file a return under the provisions of section 6043(b) or 6050 by reason of termination of its private foundation status under the provisions of section 507(b)(1)(B).

(7) *Extension of time to assess deficiencies.* If a private foundation files a notification (defined in paragraph (b)(3) of this section) that it intends to begin a 60-month termination pursuant to section 507(b)(1)(B) and does not file a request for an advance ruling pursuant to paragraph (d) of this section, such private foundation may file with the notification described in paragraph (b)(3) of this section a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the 60-month termination period shall not expire prior to one year after the date of expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period. Such consents, if filed, will ordinarily be accepted by the Commissioner. See paragraph (e)(3) of this section for an illustration of the procedure required to obtain a refund of the tax imposed by section 4940 in a case where such a consent is not in effect.

(c) *Sixty-month terminations*—(1) *Method of determining normal sources of support.* (i) In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) or (2) organization, an organization must meet the requirements of section 509(a)(1) or (2), as the case may be, for a continuous period of at least 60 calendar months. In determining whether an organization seeking status under section 509(a)(1) as an organization described in section 170(b)(1)(A)(iv) or (vi) or under section 509(a)(2) normally meets the requirements set forth under such sections, support received in taxable years prior to the commencement of the 60-month period shall not be taken into consideration, except as otherwise provided in this section.

(ii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) for a continuous period of 60 calendar months only if the organization satisfies the provisions of § 1.170A–9T(f), other than § 1.170A–9T(f)(4)(v), based upon aggregate data for such entire period. The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(iii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(2) organization only if such organization meets the support requirements set forth in section 509(a)(2)(A) and (B) and the accompanying regulations, other than § 1.509(a)–3T(d), for the continuous period of 60 calendar months prescribed under section 507(b)(1)(B). The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(2) *Organizational and operational tests. In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as an organization described in section 170(b)(1)(A)(i), (ii), (iii), (iv), or (v) or section 509(a)(3), as the case may be, an organization must meet the requirements of the applicable provisions for a continuous period of at least 60 calendar months.* For purposes of section 507(b)(1)(B), an organization will be considered to be such an organization only if it satisfies the requirements of the applicable provision (including with respect to section 509(a)(3), the organizational and operational test set forth in subparagraph (A) thereof) at the commencement of such 60-month period and continuously thereafter during such period.

(d) *Advance rulings for 60-month terminations*—(1) *In general.* An organization that files the notification required by section 507(b)(1)(B)(ii) that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) during the 60-month period. The issuance of a ruling will be discretionary with the Commissioner.

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (d)(1) of this section) to meet the requirements of section 507(b)(1)(B)(i) for the 60-month period, the basic consideration is whether its organizational structure (taking into account any revisions made prior to the beginning of the 60-month period), current or proposed programs or activities, actual or intended method of operation, and current or projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), (2), or (3) and paragraph (d) of this section during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

(3) *Reliance by grantors and contributors.* For purposes of sections 170, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grants or contributions to an organization which has obtained a ruling referred to in this paragraph will be treated as made to an organization described in section 509(a)(1), (2), or (3), as the case may be, until the Internal Revenue Service publishes notice that such advance ruling is being revoked (such as by publication in the Internal Revenue Bulletin). However, a grantor or contributor may not rely on such an advance ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's failure to meet the requirements of section 509(a)(1), (2), or (3), or acquired knowledge that the Internal Revenue Service had given notice to such organization that its advance ruling would be revoked. Prior to the making of any grant or contribution which allegedly will not result in the grantee's failure to meet the requirements of section 509(a)(1), (2), or (3), a potential grantee organization may request a ruling whether such grant or contribution may be made without such failure. A request for such ruling may be filed by the grantee organization with the Internal Revenue Service. The issuance of such ruling will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (d)(2) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522.

(4) *Reliance by organization.* An organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Consequently, if the organization does not pay the tax imposed by section 4940 for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such

year or years (because the organization did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and was not treated as an organization described in section 509(a)(1), (2), or (3) for such year or years), the organization is liable for interest in accordance with section 6601 if any amount of tax under section 4940 has not been paid on or before the last date prescribed for payment. However, because any failure to pay such tax during the 60-month period (or prior to the revocation of such ruling) is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(5) *Extension of time to assess deficiencies.* The advance ruling described in paragraph (d)(1) of this section shall be issued only if such organization's request for an advance ruling is filed with a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the advance ruling period shall not expire prior to 1 year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period.

(e) *Effect on grantors or contributors and on the organization itself*—(1) *Effect of satisfaction of requirements for termination; treatment during the termination period.* In the event that an organization satisfies the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period, such organization shall be treated for such entire 60-month period in the same manner as an organization described in section 509(a)(1), (2) or (3), as the case may be.

(2) *Failure to meet termination requirements*—(i) *In general.* Except as otherwise provided in paragraphs (e)(2)(ii) and (d) of this section, any organization that fails to satisfy the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period shall be treated as a private foundation for the entire 60-month period, for purposes of sections 507 through 509 and chapter 42, and grants or contributions to such an organization shall be treated as made to a private foundation for purposes of sections 170, 507(b)(1)(A), 4942, and 4945.

(ii) *Certain 60-month terminations.* Notwithstanding paragraph (e)(2)(i) of this section, if an organization fails to satisfy the requirements of section 509(a)(1), (2) or (3) for the continuous 60-month period but does satisfy the requirements of section 509(a)(1), (2) or (3), as the case may be, for any taxable year or years during such 60-month period, the organization shall be treated as a section 509(a)(1), (2) or (3) organization for such taxable year or years and grants or contributions made during such taxable year or years shall be treated as made to an organization described in section 509(a)(1), (2) or (3). In addition, sections 507 through 509 and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements. For purposes of determining whether an organization satisfies the requirements of section 509(a)(1), (2) or (3) for any taxable year in the 60-month period, the calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the taxable year being tested. The organization shall not be treated as a section 509(a)(1) or (2) organization for any taxable year during the 60-month period solely by reason of having met a public support test for the preceding year. In addition, the transition rules in § 1.170–9T(f)(14)(iii) and § 1.509(a)–3T(n)(iii) shall not apply.

(iii) *Aggregate tax benefit.* For purposes of section 507(d), the organization's aggregate tax benefit resulting from the organization's section 501(c)(3) status shall continue to be computed from the date from which such computation would have been made, but for the notice filed under section 507(b)(1)(B)(ii), except that any taxable year within such 60-month period for which such organization meets the requirements of section 509(a)(1), (2), or (3) shall be excluded from such computations.

(iv) *Excess business holdings.* See section 4943 and the accompanying regulations for rules relating to decreases in a private foundation's holdings in a business enterprise which are caused by the foundation's failure to terminate its private foundation status after giving the notification for termination under section 507(b)(1)(B)(ii).

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

Example. Y, a calendar year private foundation, notifies the Internal Revenue Service that it intends to terminate its private foundation status by converting into a publicly supported organization described in section 170(b)(1)(A)(vi) and that its 60-month termination period will commence on January 1, 2010. Y does not obtain a ruling described in paragraph (d) of this section. Based upon its support for 2010, Y does not qualify as a publicly supported organization within the meaning of § 1.170A–9T(f) and this paragraph for 2010. Consequently, in order to avoid the risks of penalties and interest if Y fails to terminate within the 60-month period, Y files its 2010 return as a private foundation and pays the tax imposed by section 4940. Because a consent (described in paragraph (b)(7) of this section), which would prevent the period of limitations for all years in the 60-month period from expiring, is not in effect, in order to be able to file a claim for refund, Y and the Internal Revenue Service must agree to extend the period of limitation for all taxes imposed under chapter 42 for 2010. Based on the aggregate data for the entire 60-month period (2010 through 2014), Y does qualify as a publicly-supported organization for the entire 60-month period. Consequently, Y is treated as a publicly-supported organization for the entire 60-month period. Y files a claim for refund for the taxes paid under section 4940 for 2010, and such taxes are refunded.

(f) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

■ **Par. 6.** Section 1.509(a)–3 is amended by adding new paragraph (n) to read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

* * * * *

(n) *Effective/applicability date.* This section shall apply to taxable years beginning after December 31, 1969. The applicability of paragraphs (a)(2), (a)(3)(i), (c), (d), (e) and (k) of this section shall be limited to taxable years beginning before January 1, 2008.

■ **Par. 7.** Section 1.509(a)–3T is added to read as follows:

§ 1.509(a)–3T Broadly, publicly supported organizations (temporary).

(a)(1) [Reserved]. For further guidance see § 1.509(a)–3(a)(1).

(2) *One-third support test.* An organization will meet the one-third support test if it normally (within the meaning of paragraph (c) or (d) of this section) receives more than one-third of its support in each taxable year from any combination of—

(i) Gifts, grants, contributions, or membership fees; and

(ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity that is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations

described in paragraph (b) of this section, from permitted sources. For purposes of this section, governmental units, organizations described in section 509(a)(1) and persons other than disqualified persons with respect to the organization shall be referred to as permitted sources. For purposes of this section, the amount of support received from the sources described in paragraph (a)(2)(i) of this section and this paragraph (a)(2)(ii) (subject to the limitations referred to in this paragraph (a)(2)) will be referred to as the numerator of the one-third support fraction, and the total amount of support received (as defined in section 509(d)) will be referred to as the denominator of the one-third support fraction. For purposes of section 509(a)(2), § 1.509(a)–3(f) distinguishes gifts and contributions from gross receipts; § 1.509(a)–3(g) distinguishes grants from gross receipts; § 1.509(a)–3(h) defines membership fees; § 1.509(a)–3(i) defines ''any bureau or similar agency of a governmental unit''; § 1.509(a)–3(j) describes the treatment of certain indirect forms of support; paragraph (k) of this section describes the method of accounting for support; § 1.509(a)–3(l) describes the treatment of gross receipts from section 513(a)(1), (2), or (3) activities; and § 1.509(a)–3(m) distinguishes gross receipts from gross investment income.

(3) *Not-more-than-one-third support test*—(i) *In general.* An organization will meet the not-more-than-one-third support test under section 509(a)(2)(B) if it normally (within the meaning of paragraph (c) or (d) of this section) receives not more than one-third of its support in each taxable year from the sum of its gross investment income (as defined in section 509(e)) and the excess (if any) of the amount of its unrelated business taxable income (as defined in section 512) derived from trades or businesses that were acquired by the organization after June 30, 1975, over the amount of tax imposed on such income by section 511. For purposes of this section the amount of support received from items described in section 509(a)(2)(B) will be referred to as the numerator of the not-more-than-one-third support fraction, and the total amount of support (as defined in section 509(d)) will be referred to as the denominator of the not-more-than-one-third support fraction. For purposes of section 509(a)(2), paragraph (m) of this section distinguishes gross receipts from gross investment income. For purposes of section 509(e), gross investment income includes the items of investment income described in § 1.512(b)–1(a).

(a)(3)(ii) through (b) [Reserved]. For further guidance, see § 1.509(a)–3(a)(3)(ii) through (b).

(c) *Normally*—(1) *In general*—(i) *Definition.* The support tests set forth in section 509(a)(2) are to be computed on the basis of the nature of the organization's normal sources of support. An organization will be considered as normally receiving one third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)–3(b)) and not more than one third of its support from items described in section 509(a)(2)(B) for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the four taxable years immediately preceding the current taxable year, the aggregate amount of the support received during the applicable period from gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)–3(b)) is more than one third, and the aggregate amount of the support received from items described in section 509(a)(2)(B) is not more than one third, of the total support of the organization for such 5-year period.

(ii) *First five years of an organization's existence.* See paragraph (d)(1) of this section for the definition of ''normally'' for organizations in the first five years of their existence.

(2) *Terminations under section 507(b)(1)(B).* For the special rules applicable to the term normally as applied to private foundations that elect to terminate their private foundation status pursuant to the 60-month procedure provided in section 507(b)(1)(B), see the regulations under such section.

(3) *Exclusion of unusual grants.* For purposes of applying the 5-year aggregation test for support set forth in paragraph (c)(1) of this section, one or more contributions may be excluded from the numerator of the one-third support fraction and from the denominator of both the one-third support and not-more-than-one-third support fractions only if such a contribution meets the requirements of this paragraph (c)(3). The exclusion provided by this paragraph (c)(3) is generally intended to apply to substantial contributions and bequests from disinterested parties, which contributions or bequests—

(i) Are attracted by reason of the publicly supported nature of the organization;

(ii) Are unusual or unexpected with respect to the amount thereof; and

(iii) Would by reason of their size, adversely affect the status of the organization as normally meeting the one-third support test for any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. In the case of a grant (as defined in § 1.509(a)–3(g)) that meets the requirements of this paragraph (c)(3), if the terms of the granting instrument (whether executed before or after 1969) require that the funds be paid to the recipient organization over a period of years, the amount received by the organization each year pursuant to the terms of such grant may be excluded for such year. However, no item described in section 509(a)(2)(B) may be excluded under this paragraph (c)(3). The provisions of this paragraph (c)(3) shall apply to exclude unusual grants made during any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. See paragraph (c)(5)(ii) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (c)(3).

(4) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (c)(3) of this section, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Among the factors to be considered are—

(i) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a)(1)(C) through (G)) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person other than those persons described in this paragraph (c)(4)(i) will ordinarily be given more favorable consideration than a contribution made by a person described in this paragraph (c)(4)(i);

(ii) Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer;

(iii) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum;

(iv) Except in the case of a new organization, whether, prior to the receipt of the particular contribution,

the organization has carried on an actual program of public solicitation and exempt activities and has been able to attract a significant amount of public support;

(v) Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public;

(vi) Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in paragraph (c)(1) of this section without the benefit of any exclusions of unusual grants pursuant to paragraph (c)(3) of this section;

(vii) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through (G) continues directly or indirectly to exercise control over the organization;

(viii) Whether the organization has a representative governing body as described in § 1.509(a)–3(d)(3)(i); and

(ix) Whether material restrictions or conditions (within the meaning of § 1.507–2T(a)(7)) have been imposed by the transferor upon the transferee in connection with such transfer.

(5) *Grantors and contributors.* Prior to the making of any grant or contribution expected to meet the requirements for exclusion under paragraph (c)(3) of this section, a potential grantee organization may request a ruling whether such grant or contribution may be so excluded. Requests for such ruling may be filed by the grantee organization. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination of the applicability of paragraph (c)(3) of this section, including all information relating to the factors described in paragraph (c)(4) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (c)(3) of this section.

(6) *Examples.* The application of the principles set forth in this paragraph are illustrated by the examples as follows. For purposes of these examples, the term *general public* is defined as persons other than disqualified persons and other than persons from whom the foundation received gross receipts in excess of the greater of $5,000 or 1 percent of its support in any taxable year, the term *gross investment income* is as defined in section 509(e), and the term *gross receipts* is limited to receipts from activities which are not unrelated trades or businesses (within the meaning of section 513).

Example 1. (i) For the years 2008 through 2012, X, an organization exempt under section 501(c)(3) that makes scholarship grants to needy students of a particular city, received support from the following sources:

2008:	
Gross receipts (general public)	$35,000
Contributions (substantial contributors)	36,000
Gross investment income	29,000
Total support	100,000
2009:	
Gross receipts (general public)	34,000
Contributions (substantial contributors)	35,000
Gross investment income	31,000
Total support	100,000
2010:	
Gross receipts (general public)	35,000
Contributions (substantial contributors)	30,000
Gross investment income	35,000
Total support	100,000
2011:	
Gross receipts (general public)	33,000
Contributions (substantial contributors)	32,000
Gross investment income	35,000
Total support	100,000
2012:	
Gross receipts (general public)	31,000
Contributions (substantial contributors)	39,000
Gross investment income	30,000
Total support	$100,000

(ii) In applying section 509(a)(2) to the taxable year 2012, on the basis of paragraph (c)(1)(i) of this section, the total amount of support from gross receipts from the general public ($168,000) for the period 2008 through 2012, was more than one third, and the total amount of support from gross investment income ($160,000) was less than one third, of X's total support for the same period ($500,000). For the taxable years 2012 and 2013, X is therefore considered normally to receive more than one third of its support from the public sources described in section 509(a)(2)(A) and less than one third of its support from items described in section 509(a)(2)(B). The fact that X received less than one third of its support from section 509(a)(2)(A) sources in 2012 and more than one third of its support from items described in section 509(a)(2)(B) in 2011 does not affect its status because it met the normally test over a 5-year period.

Example 2. Assume the same facts as in *Example 1* except that in 2012, X also received an unexpected bequest of $50,000 from A, an elderly widow who was interested in encouraging the work of X, but had no other relationship to it. Solely by reason of the bequest, A became a disqualified person. X used the bequest to create 5 new scholarships. Its operations otherwise remained the same. Under these circumstances X could not meet the 5-year support test because the total amount received from gross receipts from the general public ($168,000) would not be more than one-third of its total support for the 5-year period ($550,000). Because A is a disqualified person, her bequest cannot be included in the numerator of the one-third support test under section 509(a)(2)(A). However, based on the factors set forth in paragraph (c)(4) of this section, A's bequest may be excluded as an unusual grant under paragraph (c)(3) of this section. Therefore, X will be considered to have met the support test for the taxable years 2012 and 2013.

Example 3. Y, an organization described in section 501(c)(3), was created by A, the holder of all the common stock in M corporation, B, A's wife, and C, A's business associate. The purpose of Y was to sponsor and equip athletic teams for underprivileged children in the community. Each of the three creators makes small cash contributions to Y. A, B, and C have been active participants in the affairs of Y since its creation. Y regularly raises small amounts of contributions through fundraising drives and selling admission to some of the sponsored sporting events. The operations of Y are carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams of underprivileged children. In 2009, M recapitalizes and creates a first and second class of 6 percent nonvoting preferred stock, most of which is held by A and B. In 2010, A contributes 49 percent of his common stock in M to Y. A's contribution of M's common stock was substantial and constitutes 90 percent of Y's total support for 2010. A combination of the facts and circumstances described in paragraph (c)(4) of this section preclude A's contribution of M's common stock in 2010 from being excluded as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether Y meets the one-third support test under section 509(a)(2).

Example 4. (i) M is organized in 2009 to promote the appreciation of ballet in a particular region of the United States. Its principal activities consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. M receives a determination letter that it is an organization described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of M consists of 9 prominent unrelated

citizens residing in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of the art form.

(ii) In 2010, Z, a private foundation, proposes to makes a grant of $500,000 in cash to M to provide sufficient capital for M to commence its activities. Although A, the creator of Z, is one of the nine members of M's governing body, was one of M's original founders, and continues to lend his prestige to M's activities and fund raising efforts, A does not, directly or indirectly, exercise any control over M. M also receives a significant amount of support from a number of smaller contributions and pledges from other members of the general public. M charges admission to the ballet performances to the general public.

(iii) Although the support received in 2010 will not impact M's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for the 2014 taxable year, using the computation period 2010 through 2014. Within the appropriate timeframe, M may submit a request for a private letter ruling that the $500,000 contribution from Z qualifies as an unusual grant.

(iv) Under the above circumstances, even though A was a founder and member of the governing body of M, M may exclude Z's contribution of $500,000 in 2010 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014.

Example 5. (i) Assume the same facts as *Example 4.* In 2013, B, a widow, passes away and bequeaths $4 million to M. During 2009 through 2013, B made small contributions to M, none exceeding $10,000 in any year. During 2009 through 2013, M received approximately $550,000 from receipts for admissions and contributions from the general public. At the time of B's death, no person standing in a relationship to B described in section 4946(a)(1)(C) through (G) was a member of M's governing body. B's bequest was in the form of cash and readily marketable securities. The only condition placed upon the bequest was that it be used by M to advance the art of ballet.

(ii) Although the support received in 2013 will not impact M's status as a public charity for its first five taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for future years. Within the appropriate timeframe, M may submit a request for a private letter ruling that the $4 million bequest from B qualifies as an unusual grant.

(iii) Under the above circumstances, M may exclude B's bequest of $4 million in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014 and subsequent years.

Example 6. (i) N is a research organization that was created by A in 2009 for the purpose of carrying on economic studies primarily through persons receiving grants from N and engaging in the sale of economic publications. N received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in 509(a)(2). N's five-member governing body consists of A, A's sons, B and C, and two unrelated economists. In 2009, A made a contribution to N of $100,000 to help establish the organization. During 2009 through 2013, A made annual contributions to N averaging $20,000 a year. During the same period, N received annual contributions from members of the general public averaging $15,000 per year and receipts from the sale of its publications averaging $50,000 per year. In 2013, B made an inter vivos contribution to N of $600,000 in cash and readily marketable securities.

(ii) Although the support received in 2013 will not impact N's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether N meets the one-third support test under section 509(a)(2) for future years. In determining whether B's contribution of $600,000 in 2013 may be excluded as an unusual grant, the support N received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that N received a determination letter that it is described in section 509(a)(2).

(iii) Based on the application of the factors in paragraphs (c)(4)(i) through (ix) of this section to N's circumstances, in particular the facts that B is a disqualified person described in section 4946(a)(1)(D) and N does not have a representative governing body as described in paragraphs (c)(4)(viii) and (d)(3)(i) of this section, N cannot exclude B's contribution of $600,000 in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether N meets the one-third support test under section 509(a)(2) for 2014 and future years.

Example 7. (i) O is an educational organization created in 2009. O received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of O has 9 members, consisting of A, a prominent civic leader and 8 other unrelated civic leaders and educators in the community, all of whom participated in the creation of O. During 2009 through 2013, the principal source of income for O has been receipts from the sale of its educational periodicals. These sales have amounted to $200,000 for this period. Small contributions amounting to $50,000 have also been received during the same period from members of the governing body, including A, as well as other members of the general public.

(ii) In 2013, A contributed $750,000 of the nonvoting stock of S, a closely held corporation, to O. A retained a substantial portion of the voting stock of S. By a majority vote, the governing body of O decided to retain the S stock for a period of at least 5 years.

(iii) Although the support received in 2013 will not impact O's status as a public charity for its first 5 taxable years, it will be relevant to the determination of whether O meets the one-third support test under section 509(a)(2) for future years. In determining whether A's contribution of the S stock in 2013 may be excluded as an unusual grant, the support O received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that O received a determination letter that it is described in section 509(a)(2).

(iv) Based on the application of the factors in paragraphs (c)(4)(i) through (ix) of this section to O's circumstances, in particular the facts that A is a foundation manager within the meaning of section 4946(b) and A's contribution is in the form of closely held stock, O cannot exclude A's contribution of the S stock in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether O meets the one-third support test under section 509(a)(2) for 2014 and future years.

(d) *Definition of normally—first five years of an organization's existence*—(1) *In general.* An organization meets the one-third support test and the not-more-than-one-third support test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the one-third support test and the not-more-than-one-third support test during that period. With respect to such organization's sixth taxable year, the organization shall be described in section 509(a)(2) if it meets the one-third support test and the not-more-than-one-third support test under the definition of normally set forth in paragraph (c)(1)(i) of this section for its sixth taxable year (based on support received in its second through sixth taxable years), or for its fifth taxable year (based on support received in its first through fifth taxable years).

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (c)(1)(i) of this section) to meet the one-third support test under section 509(a)(2)(A) and the not-more-than-one-third support test under section 509(a)(2)(B) described in paragraph (c) of this section during its first 5 taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. An organization cannot reasonably be expected to meet the one-third support test and the not-more-than-one-third support test where the facts indicate that an organization is likely during its

first five taxable years to receive less than one-third of its support from permitted sources (subject to the limitations of paragraph (b) of this section) or to receive more than one-third of its support from items described in section 509(a)(2)(B).

(3) *Factors taken into account.* All pertinent facts and circumstances shall be taken into account under paragraph (d)(2) of this section in determining whether the organizational structure, programs or activities, and method of operation of an organization are such as to enable it to meet the tests under section 509(a)(2) during its first five taxable years. Some of the pertinent factors are:

(i) Whether the organization has or will have a governing body which is comprised of public officials, or individuals chosen by public officials acting in their capacity as such, of persons having special knowledge in the particular field or discipline in which the organization is operating, of community leaders, such as elected officials, clergymen, and educators, or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership. This characteristic does not exist if the membership of the organization's governing body is such as to indicate that it represents the personal or private interests of disqualified persons, rather than the interests of the community or the general public.

(ii) Whether a substantial portion of the organization's initial funding is to be provided by the general public, by public charities, or by government grants, rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization. The fact that the organization plans to limit its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons will be taken into consideration in determining whether those persons providing the initial support for the organization are representative of the general public. On the other hand, the subsequent sources of funding which the organization can reasonably expect to receive after it has become established and fully operational will also be taken into account.

(iii) Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment, and whether the investment of such funds is unlikely to result in more than one-third of its total support being received from items described in section 509(a)(2)(B).

(iv) In the case of an organization that carries on fundraising activities, whether the organization has developed a concrete plan for solicitation of funds from the general public on a community or area-wide basis; whether any steps have been taken to implement such plan; whether any firm commitments of financial or other support have been made to the organization by civic, religious, charitable, or similar groups within the community; and whether the organization has made any commitments to, or established any working relationships with, those organizations or classes of persons intended as the future recipients of its funds.

(v) In the case of an organization that carries on community services, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs, whether the organization has a concrete program to carry out its work in the community; whether any steps have been taken to implement that program; whether it will receive any part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant or contribution; and whether it has enlisted the sponsorship or support of other civic or community leaders involved in community service programs similar to those of the organization.

(vi) In the case of an organization that carries on educational or other exempt activities for, or on behalf of, members, whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community, area, profession, or field of special interest (depending on the size of the area and the nature of the organization's activities); whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross-section of the public rather than to restrict membership to a limited number of persons; and whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

(vii) In the case of an organization that provides goods, services, or facilities, whether the organization is or will be required to make its services, facilities, performances, or products available (regardless of whether a fee is charged) to the general public, public charities, or governmental units, rather than to a limited number of persons or organizations; whether the organization will avoid executing contracts to perform services for a limited number of firms or governmental agencies or bureaus; and whether the service to be provided is one which can be expected to meet a special or general need among a substantial portion of the general public.

(4) *Example.* The application of this paragraph (d) may be illustrated by the following example:

Example. (i) Organization X was formed in January 2008 and uses a December 31 taxable year. After September 9, 2008, and before December 31, 2008, Organization X filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in section 509(a)(2). In its application, Organization X established that it can reasonably be expected to operate as a public charity under this paragraph (d). Subsequently, Organization X received a ruling or determination letter that it is an organization described in sections 501(c)(3) and 509(a)(2) effective as of the date of its formation.

(ii) Organization X is described in section 509(a)(2) for its first 5 taxable years (for the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization X can qualify as a public charity beginning with the taxable year ending December 31, 2013, if Organization X can meet the requirements of § 1.170A–9T(f)(4)(i) through (iii) or paragraphs (a) through (b) of this section for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(e) *Determinations on foundation classification and reliance.* (1) A ruling or determination letter that an organization is described in section 509(a)(2) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 509(a)(2). The ruling or determination letter that the organization is described in section 509(a)(2) may be revoked if, upon examination, the organization has not met the requirements of this section. The ruling or determination letter that the organization is described in section 509(a)(2) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements of fact or such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an

organization is described in section 509(a)(2) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(2) *Status of grantors or contributors.* For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, grantors and contributors may rely upon a determination letter or ruling that an organization is described in section 509(a)(2) until the Internal Revenue Service publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, ''Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,'' which can be searched at *www.irs.gov*). For this purpose, grantors or contributors may also rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 509(a)(2) or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from such classification.

(3) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Y, a calendar year organization described in section 501(c)(3), is created in February 2008 for the purpose of displaying African art. On its exemption application Y shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first 5 taxable years, 2008 through 2012. Y may therefore receive a determination that it meets the requirements of paragraph (a) of this section. Pursuant to such determination, Y will be a public charity for its first five taxable years (2008, 2009, 2010, 2011, and 2012), regardless of the public support Y in fact receives during this period.

Example 2. Z, a calendar year organization described in section 501(c)(3), is created in July 2008. On its exemption application Z shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first 5 taxable years, 2008 through 2012. Z receives a determination that it is described in section 509(a)(2). However, the support actually received from the public over Z's first 5 taxable years (2008 through 2012) does not satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2), nor does the support Z receives from 2009 through and including its sixth taxable year, 2013, meet the one-third support and not-more-than-one-third support tests described in section 509(a)(2). Z is described in section 509(a)(2) during its first five years for all purposes. But, because Z has not met the requirements of paragraph (a) of this section either for 2008 through 2012 or 2009 through 2013, Z is not described in section 509(a)(2) for its taxable year 2013. If Z is not described in section 509(a)(1), (3), or (4), then Z is a private foundation as of 2013, and Z will be treated as a private foundation for all purposes (except as provided in paragraph (e)(2) of this section with respect to grantors and contributors).

(f) through (j) [Reserved]. For further guidance, see § 1.509(a)–3(f) through (j).

(k) *Method of accounting.* For purposes of section 509(a)(2), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which it regularly computes its income in keeping its books under section 446.

(l) and (m) [Reserved]. For further guidance, see § 1.509(a)–3(l) and (m).

(n) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) will be treated as meeting the requirements of paragraph (d)(1) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the Internal Revenue Service issued to the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (d)(1) of this section shall not apply to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth in § 1.509(a)–3(c)(1) or § 1.170A–9(e)(4)(i) or (ii) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (n) may be illustrated by the following examples:

Example 1. (i) Organization M was formed in January 2004, and uses a June 30 taxable year. Organization M received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a public charity under section 509(a)(2) during the five-year advance ruling period that will end on June 30, 2008. This date is within 90 days before September 9, 2008.

(ii) Under the transition rule, Organization M is a public charity described in section 509(a)(2) for the taxable years ending June 30, 2004, through June 30, 2008. Organization M does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A–9(e) or § 1.509(a)–3, as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for its advance ruling period.

(iii) Organization M can qualify as a public charity beginning with the taxable year ending June 30, 2009, if Organization M can meet the requirements of § 1.170A–9T(f)(4)(i) or (ii) or paragraph (c)(1) of this section for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization M may qualify as a public charity by availing itself of the transition rule contained in paragraph (n)(iii) of this section, which looks to support received by M in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization N was formed in January 2000 and uses a December 31 taxable year. Organization N received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a public charity prior to September 9, 2008.

(ii) For taxable year 2008, Organization N will qualify as publicly supported if it meets the requirements under either § 1.170A–9T(f)(4)(i) or (ii) or paragraph (c)(1) of this section for the five-year period January 1, 2004, through December 31, 2008. Organization N will also qualify as publicly supported for taxable year 2008 if it meets the requirements under either § 1.170A–9(e)(4)(i) or (ii) or § 1.509(a)–3(c)(1) as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(o) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraphs (a)(2), (a)(3)(i), (c), (d), (e) and (k) of this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires on September 8, 2011.

■ **Par. 8.** Section 1.6033–2 is amended by revising paragraph (k) to read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

* * * * *

(k) *Effective/applicability date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969. The applicability of paragraphs (a)(2)(ii)(*g*) and (a)(2)(ii)(*h*) of this section shall be limited to taxable years beginning before January 1, 2008.

■ **Par. 9.** Section 1.6033–2T is added to read as follows:

§ 1.6033–2T Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980) (temporary).

(a)(1) through (a)(2)(ii)(*f*) [Reserved]. For further guidance, see § 1.6033–2(a)(1) through (a)(2)(ii)(*f*).

(*g*) The names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization, and, in the case of a private foundation, all persons who are foundation managers, within the meaning of section 4946(b)(1). Organizations must also attach a schedule showing the names and addresses and/or total numbers of key employees, highly compensated employees and independent contractors as prescribed by publication, form or instructions.

(*h*) A schedule showing the compensation and other payments made to each person whose name is required to be listed in paragraph (a)(2)(ii)(*g*) of this section during the calendar year ending within the organization's annual accounting period, or during such other period as prescribed by publication, form or instructions

(a)(2)(ii)(*i*) through (*j*) [Reserved]. For further guidance, see § 1.6033–2(a)(2)(ii)(i) through (j).

(k) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 9, 2008.

(2) *Applicability date.* The regulations in paragraphs (a)(2)(ii)(*g*) and (a)(2)(ii)(*h*) of this section shall apply to taxable years beginning on or after January 1, 2008.

(3) *Expiration date.* The applicability of this section expires September 8, 2011.

■ **Par. 10.** Section 1.6043–3 is amended as follows:

■ 1. The undesignated text following paragraph (b)(8) is designated as paragraph (b)(9).

■ 2. Paragraph (d)(3) is revised.

■ 3. New paragraph (e) is added.

The addition and revision read as follows:

§ 1.6043–3 Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

* * * * *

(d)(3) For the definition of the term ''integrated auxiliaries'' as used in paragraph (b)(1) of this section, see § 1.6033–2(h).

(e) *Effective/applicability date.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969. The applicability of paragraphs (b)(8) and (d) of this section shall be limited to returns filed for taxable years beginning before January 1, 2008.

■ **Par. 11.** Section 1.6043–3T is added to read as follows:

§ 1.6043–3T Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a) (temporary).

(a) through (b)(7) [Reserved]. For further guidance, see § 1.6043–3(a) through (b)(7).

(b)(8) Any organization no longer exempt from taxation under section 501(a) and that during the period of its exemption under such section was not an organization described in section 501(c)(3), a corporation described in section 501(c)(2) that held title to property for an organization described in section 501(c)(3), or an organization described in such other section as prescribed by publication, form or instructions.

(b)(9) and (c) [Reserved]. For further guidance, see § 1.6043–3(b)(9) and (c).

(d) *Definitions.* (1) For the definition of the term ''normally'' as used in paragraph (b)(2) of this section, see § 1.6033–2(g)(3).

(2) For the definition of the term ''integrated auxiliaries'' as used in paragraph (b)(1) of this section, see § 1.6033–2(h).

(e) *Effective/applicability date*—(1) *Effective date.* The regulations in this section are effective on September 9, 2008.

(2) *Applicability date.* Paragraphs (b)(8) and (d) of this section shall apply to returns filed for taxable years beginning on or after January 1, 2008.

(3) *Expiration* date. The applicability of this section expires on September 8, 2011.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 12.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 13.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6033–2T	1545–2117
* * * * *	

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: August 21, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–20560 Filed 9–8–08; 8:45 am]

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Federal Register

Tuesday,
September 9, 2008

Part V

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA–06–25885 (HM–232F)]

RIN 2137–AE22

Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA, in consultation with the Transportation Safety Administration (TSA) of the Department of Homeland Security (DHS), is proposing to modify its current security plan requirements governing the commercial transportation of hazardous materials by air, rail, vessel, and highway. Based on an evaluation of the security threats associated with specific types and quantities of hazardous materials, the proposed rule would narrow the list of materials subject to security plan requirements and reduce associated regulatory costs and paperwork burden. The proposed rule also would clarify certain requirements related to security planning, training, and documentation and incorporate and build on recent international standards governing hazardous materials security.

DATES: Submit comments by November 10, 2008.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–06–25885) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, 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.

For more detailed instruction on comment submission, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky or Ben Supko, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, 202–366–8553.

SUPPLEMENTARY INFORMATION:

Comment Submission

Instructions: Identify the agency and docket number (PHMSA–06–25885) at the beginning of your submission. Except for comments that receive confidential treatment, all comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information provided. Detailed instructions for requesting confidential treatment are provided below, under the Privacy Act heading.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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), which may also be found at *http://www.regulations.gov.*

You may request confidential treatment of comments or portions of comments under the procedures set forth in 49 CFR part 105. While all comments should be sent to the FDMS, PHMSA will consider separately and not place in the public docket those comments or portions of comments PHMSA determines to include trade secrets, other confidential commercial information, or sensitive security information (SSI). In accordance with 49 CFR 105.30, you may ask PHMSA to keep information confidential using the following procedures: (1) Mark ''confidential'' on each page of the original document you would like to keep confidential; (2) send FDMS both the original document and a second copy of the original document with the confidential information redacted; and (3) explain why the information is confidential (as a trade secret, other confidential commercial information, or SSI). In your explanation, you should provide enough information to enable PHMSA to determine whether the information provided is protected by law and must be handled separately.

In addition, for comments or portions of comments that you believe contain SSI as defined in 49 CFR 15.7, you should comply with Federal regulations governing the handling of SSI. See 49 CFR 1520.9 and 49 CFR 15.9, Restrictions on the disclosure of sensitive security information. Those regulations restrict the disclosure of SSI to those with a need to know and set forth specific requirements for marking, packaging, and disposing of documents containing SSI. Note when mailing in or using a special delivery service to send comments containing SSI, comments should be wrapped in a manner to prevent the information from being read. PHMSA may perform concurrent reviews on requests for designations as SSI.

After reviewing your request for confidentiality and the information provided, PHMSA will determine whether the information should be treated as confidential under applicable laws and regulations. PHMSA will notify you of the decision to grant or deny confidential treatment. If PHMSA denies your request, you will be provided an opportunity to request reconsideration before the information is publicly disclosed. PHMSA will reconsider its decision to deny confidentiality based on your response.

To further guard against disclosure of SSI, PHMSA will review all submissions, whether or not they are identified as confidential, prior to their posting on the public docket. PHMSA will notify you if we determine that information in your submission should not be disclosed to the public. If you have any questions concerning the procedures for determining confidentiality or security sensitivity, you may call one of the individuals listed below.

I. Background

A. Current DOT Security Requirements

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require persons who offer for transportation or transport certain hazardous materials in commerce to develop and implement security plans. The security plan requirements in subpart I of part 172 of the HMR apply to persons who offer for transportation or transport:

(1) A highway-route controlled quantity of a Class 7 (radioactive) material;

(2) More than 25 kg (55 lbs.) of a Division 1.1, 1.2, or 1.3 (explosive) material;

(3) More than 1 L (1.06 qt.) per package of a material poisonous by inhalation in Hazard Zone A;

(4) A shipment in a bulk packaging with a capacity equal to or greater than13,248 L (3,500 gallons) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 lbs.) gross weight or more of one class of hazardous materials for which placarding is required;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73 or a select agent or toxin regulated by the U.S. Department of Agriculture under 9 CFR part 121; or

(7) A shipment that requires placarding under subpart F of part 172 of the HMR.

A security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures implemented as part of the plan may vary with the level of threat at a particular time. At a minimum, the security plan must address personnel security, unauthorized access, and en route security. For personnel security, the plan must include measures to confirm information provided by job applicants for positions involving access to and handling of the hazardous materials covered by the plan. For unauthorized access, the plan must include measures to address the risk of unauthorized persons gaining access to materials or transport conveyances being prepared for transportation. For en route security, the plan must include measures to address security risks during transportation, including the security of shipments stored temporarily en route to their destinations.

As indicated above, the HMR set forth general requirements for a security plan's components rather than a prescriptive list of specific items that must be included. The HMR set a performance standard providing offerors and carriers with the flexibility necessary to develop security plans addressing their individual circumstances and operational environments. Accordingly, each security plan will differ because it will be based on an offeror's or a carrier's individualized assessment of the security risks associated with the specific hazardous materials it ships or transports and its unique circumstances and operational environment.

B. International Transportation Security Standards

The United Nations Model Regulations on the Transport of Dangerous Goods (UN Recommendations) identify high consequence dangerous goods for which enhanced security measures are recommended. The recommended security measures include security plans and are similar to the requirements in subpart I of part 172 of the HMR. The UN Recommendations define high consequence dangerous goods as materials with the ''potential for mis-use in a terrorist incident and which may, as a result, produce serious consequences such as mass casualties or mass destruction.'' The UN Recommendations list the following materials as high consequence dangerous goods:

(1) Division 1.1 explosives;

(2) Division 1.2 explosives;

(3) Division 1.3 compatibility group C explosives;

(4) Division 1.5 explosives;

(5) Bulk shipments of Division 2.1 flammable gases;

(6) Division 2.3 toxic gases (excluding aerosols);

(7) Bulk shipments of Class 3 flammable liquids in PG I or II;

(8) Class 3 and Division 4.1 desensitized explosives;

(9) Bulk shipments of Division 4.2 PG I materials;

(10) Bulk shipments of Division 4.3 PG I materials;

(11) Bulk shipments of Division 5.1 PG I oxidizing liquids;

(12) Bulk shipments of Division 5.1 perchlorates, ammonium nitrate and ammonium nitrate fertilizers;

(13) Division 6.1 PG I toxic materials;

(14) Division 6.2 infectious substances of Category A (UN2814 and 2900);

(15) Class 7 radioactive materials in quantities greater than 3000 A_1 (special form) or 3000 A_2, as applicable, in Type B(U) or Type B(M) or Type (C) packages; and

(16) Bulk shipments of Class 8 PG I materials.

For purposes of the security provisions, the UN defines ''in bulk'' to mean quantities greater than 3,000 kg (6,614 lbs.) or 3,000 liters (793 gallons) in portable tanks or bulk containers.

C. Petitions for Rulemaking

PHMSA has received two petitions for rulemaking requesting a review and reevaluation of the current HMR security plan requirements. The Council on Safe Transportation of Hazardous Articles (COSTHA) petitioned PHMSA (P–1447) to reevaluate the security requirements in subpart I of part 172 of the HMR to ''enhance international harmonization and to better utilize available resources in enhancing hazardous materials transportation security.'' COSTHA notes that the list of hazardous materials subject to the security plan requirements differs from the list of high consequence dangerous goods in the UN Recommendations. COSTHA requests that PHMSA adopt the same criteria as the UN Recommendations for materials that are subject to the security plan requirements or, as an alternative, eliminate the security plan requirement for quantities of hazardous materials currently subject to placarding under subpart F of part 172. COSTHA cites several examples of hazardous materials (*e.g.*, automobile batteries, inks, paint, flavoring extracts) that, based on hazard class and quantity are placarded and subject the security plan requirements under the HMR, but not covered by the list of high consequence dangerous goods in the UN Recommendations. COSTHA acknowledges that these materials pose certain risks in transportation, but contends it is highly unlikely a terrorist would use these materials to perpetrate a terrorist attack.

Similarly, the American Trucking Associations (ATA) petitioned PHMSA (P–1466) to designate a subset of ''security sensitive hazardous materials'' that would trigger security plan requirements. The ATA urges PHMSA to use the list of materials and quantities subject to the Federal Motor Carrier Safety Administration (FMCSA) Hazardous Materials Safety Permit requirements as the starting point for determining security sensitive hazardous materials. In 49 CFR part 385, FMCSA requires a safety permit for motor carriers transporting specified quantities of Class 7 (radioactive) materials; Class 1 materials (explosives); materials that are poisonous or toxic by inhalation (PIH or TIH materials); and compressed or refrigerated liquefied methane or liquefied natural gas. In addition to those materials, ATA suggests that PHMSA add the following materials from the UN high consequence dangerous goods list: (1) Bulk shipments of Division 2.1; (2) bulk shipments of Class 3, PG I and II; (3) Class 3 and Division 4.1 desensitized explosives (quantity to be determined); (4) bulk shipments of Division 4.2, PG I; (5) bulk shipments of Division 4.3, PG I; (6) bulk shipments of Division 5.1, PG I; (7) bulk shipments of Division 5.1 perchlorates, ammonium nitrate and ammonium nitrate fertilizers; (8) Division 6.2 infectious substances of Category A (quantity to be determined); (9) any quantity of select agents; and (10) bulk shipments of Class 8, PG I. The ATA uses quantities greater than 3,500 gallons or 5,000 pounds to define ''bulk'' for purposes of security planning.

We agree with COSTHA and ATA that the list of materials for which a security plan is required should be reevaluated. Our existing security plan rules were developed as baseline requirements. We considered the company preparing the security plan to be in the best position to assess security risks based on its operational circumstances. If security risks were determined to be insignificant, this would be reflected in a simple security plan with minimal content. Increased coverage would be required when security risks are more substantial. The security plan requirements went into effect more than four years ago, on September 25, 2003. Since then, both the industry and the government have gained experience evaluating security risks associated with specific hazardous materials and transportation environments and identifying appropriate measures to address those risks. Accordingly, we initiated this rulemaking, in coordination with other DOT modal administrations (the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and FMCSA), and TSA to consider modifications to the list of hazardous materials for which security plans are required.

II. Advance Notice of Proposed Rulemaking

On September 21, 2006, PHMSA published an advance notice of proposed rulemaking (ANPRM) seeking public comment on the current security plan requirements. Commenters were asked to address the list of materials posing a security threat sufficient to justify preparation and implementation of a security plan, including factors that should be considered in assessing security risks; quantity thresholds that would trigger the security plan requirement; packing group criteria; and the availability of hazardous materials outside of transportation.

On November 30, 2006, PHMSA hosted a public meeting to discuss these issues and invite further comments and information concerning the types and quantities of materials that should be covered by the security plan rule. Six persons made presentations at the public meeting. A transcript of the meeting, with the statements of presenters, is available for review in the public docket for this rulemaking.

Written comments were received from 34 industry associations, offerors, carriers, and private citizens, identified in the following list.

ID/name/company	Date	Docket No.
1 Clare L. Welker	09/28/2006	PHMSA–2006–25885–2
2 Gregory Sutherland	10/03/2006	PHMSA–2006–25885–3
3 Clare L. Welker	10/19/2006	PHMSA–2006–25885–4
4 Duplainville Transport	10/25/2006	PHMSA–2006–25885–5
5 Ecolab	11/22/2006	PHMSA–2006–25885–6
6 Arthur E. Hall	11/21/2006	PHMSA–2006–25885–7
7 Institute of Makers of Explosives (IME)	11/30/2006	PHMSA–2006–25885–8
8 Thomas Jefferson National Accelerator Facility (Jefferson Lab)	12/13/2006	PHMSA–2006–25885–9
9 U.S. Department of Energy (DOE)	12/18/2006	PHMSA–2006–25885–10
10 Thomas L. Dunaway	12/18/2006	PHMSA–2006–25885–11
11 National Refrigerants, Inc. (NRI)	12/19/2006	PHMSA–2006–25885–13
12 United States Nuclear Regulatory Commission (NRC)	12/19/2006	PHMSA–2006–25885–14
13 Veolia ES Technical Solutions, L.L.C. (Veolia)	12/19/2006	PHMSA–2006–25885–15
14 Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR)	12/19/2006	PHMSA–2006–25885–16
15 Flavor and Extract Manufacturers Association (FEMA)	12/20/2006	PHMSA–2006–25885–17
16 Fragrance Materials Association (FMA)	12/20/2006	PHMSA–2006–25885–18
17 The Dow Chemical Company (Dow)	12/20/2006	PHMSA–2006–25885–19
18 Laboratory Corporation of America Holdings	12/19/2006	PHMSA–2006–25885–20
19 American Trucking Associations, Inc (ATA)	12/20/2006	PHMSA–2006–25885–21
20 Dangerous Goods Transport Consulting, Inc	12/20/2006	PHMSA–2006–25885–22
21 Air-Conditioning and Refrigeration Institute (ARI)	12/20/2006	PHMSA–2006–25885–23
22 Total Petrochemicals USA, Inc.	12/20/2006	PHMSA–2006–25885–24
23 American Beverage Association (ABA)	12/19/2006	PHMSA–2006–25885–25
24 Reusable Industrial Packaging Association (RIPA)	12/20/2006	PHMSA–2006–25885–26
25 Utility Solid Waste Activities Group (USWAG)	12/20/2006	PHMSA–2006–25885–27
26 Association of Hazmat Shippers, Inc. (AHS)	12/21/2006	PHMSA–2006–25885–28
27 National Paint & Coatings Association, Inc. (NPCA)	12/20/2006	PHMSA–2006–25885–29
28 National Propane Gas Association (NPGA)	12/21/2006	PHMSA–2006–25885–30
29 Dangerous Goods Advisory Council (DGAC)	12/21/2006	PHMSA–2006–25885–31
30 Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA)	12/22/2006	PHMSA–2006–25885–32
31 National Tank Truck Carriers, Inc. (NTTC)	12/27/2006	PHMSA–2006–25885–33
32 Battery Council International (BCI)	01/12/2007	PHMSA–2006–25885–34
33 Nuclear Energy Institute (NEI)	01/12/2007	PHMSA–2006–25885–35
34 Bill Bradshaw—Comments	05/17/2007	PHMSA–2006–25885–36

The full text of their comments are available for review through the Federal eRulemaking Portal (*http://www.regulations.gov*).

Most commenters agree that the list of materials for which security plans are required should be revised to include only those materials that pose a significant security threat in transportation. In the words of one commenter, ''[R]egulating hazardous materials transportation security at the placarded load level is inconsistent with a risk-based approach. Using placards as a trigger for hazardous materials security regulations results in the overregulation of materials that are not capable of being used as a terrorist weapon.'' (ATA) Several commenters suggest that our rule should address two types of threats from the misuse of hazardous materials. As one put it: ''First, there are commercial shipments of materials that, based on the hazard and quantity in the package would, if attacked in transportation and catastrophically released, enhance the damage or destruction of the attack. * * * Second, there are other materials whose value to a terrorist is in the theft

or diversion of the material for manipulation into weapons of mass destruction (WMD).'' (IME) Similarly, ''Risk should be assessed considering the nature of the threat, the vulnerability of the target, and the potential consequences of an incident. Threat scenarios should consider the potential for a serious catastrophic release from a direct attack, the potential for tampering and subsequent downstream impact, and the potential for theft and misuse as a weapon of mass destruction.'' (Dow)

Commenters also agree that, in developing this list, PHMSA should consider the potential for a material to be used for a criminal or terrorist act and the consequences of such an action, based on the hazard class and packing group of the material and the quantity or volume transported. Commenters generally oppose a material-specific list of chemicals and other materials that pose a security risk. ''We urge PHMSA to reject [security sensitive hazardous materials] lists that are material-by-material based and to continue to embrace one based on a hazard class approach. * * * Among other advantages, a hazard class approach can be internationally harmonized and it addresses issues created by mixtures and solutions that have plagued material-by-material lists in other regulatory venues.'' (IME)

Most commenters suggest that security plan requirements should apply to the list of hazardous materials identified in the UN Recommendations as ''high consequence dangerous goods.'' ''[W]e believe the current Security Plan requirements should be harmonized with the UN Recommendations so that they focus on the types of hazards and volumes that pose a real threat of weaponization.'' (Flavor and Extract Manufacturers Association) Also, ''[t]he UN recommendation to require security plans for 'High Consequence Dangerous Goods' appears to be a reasonable approach, which considers hazard, form of packaging and volume thresholds.'' (Dow) As well, ''the UN Recommendations individually define 'significant risk' materials and quantities based on the actual risk factors * * * rather than general transport classifications. Importantly, material identification is accomplished through a stakeholder developed 'list of high consequence dangerous goods' ensuring that material is independently peer reviewed before it is assigned a risk level.'' (Air-Conditioning and Refrigeration Institute).

III. Proposed Modifications to Security Plan Criteria

A. Summary of Proposal

Based on the comments received on the ANRPM and an evaluation of possible security threats posed by specific types and classes of hazardous materials, PHMSA is proposing to modify the list of materials for which a security plan is required. PHMSA agrees with the commenters to the ANPRM that the UN list of high consequence dangerous goods includes most of the hazardous materials that pose a significant transportation security risk. The UN list of high consequence dangerous goods was used as the starting point for our deliberations for this NPRM.

PHMSA worked closely with FRA, FMCSA, and TSA to assess the transportation security risks associated with the different classes and quantities of hazardous materials. To determine the types of materials that should be subject to security planning requirements, PHMSA evaluated specific transportation scenarios in which a terrorist could deliberately use hazardous materials to cause large-scale casualties and property damage. In our qualitative risk evaluation, we considered the following factors: (1) Physical and chemical properties of the material or class of materials and how those properties could contribute to a security incident; (2) quantities shipped and mode of transport; (3) past terrorist use; (4) potential use; and (5) availability. One of the most significant security vulnerabilities involves the potential for a perpetrator to take control of a conveyance containing a high-risk material and move it to a site where the material could cause maximum damage or provide unusual leverage. For some hazardous materials, the primary security threat involves theft or highjacking of raw materials for use in weapons of mass destruction.

On the basis of these considerations, PHMSA proposes to modify the current list of materials covered by the security plan requirement, as summarized in the following table:

PROPOSED REVISIONS TO THE LIST OF HAZARDOUS MATERIALS FOR WHICH TRANSPORTATION SECURITY PLANS WILL BE REQUIRED

Class	Current threshold	Proposed threshold	Change
1.1	Any quantity	Any quantity	None.
1.2	Any quantity	Any quantity	None.
1.3	Any quantity	Any quantity	None.
1.4	A quantity requiring placarding	Any quantity of UN 0104, 0237, 0255, 0267, 0289, 0361, 0365, 0366, 0440, 0441, 0455, 0456, 0500.	Security plan required only for detonators and shaped charges.
1.5	A quantity requiring placarding	Any quantity	Security plan required for all shipments.
1.6	A quantity requiring placarding	Not subject	Security plan not required for any Division 1.6 shipments.
2.1	A quantity requiring placarding	3,000 L in a single packaging	Security plan not required for less than 3,000 L.
2.2	A quantity requiring placarding	Not subject except for oxygen and gases with a subsidiary 5.1 hazard (3,000 L in a single packaging).	Security plan not required for most non-flammable, non-poisonous compressed gas shipments.
2.3	Any quantity	Any quantity	None.
3	A quantity requiring placarding	3,000 L in a single packaging and any quantity of Class 3 desensitized explosives.	Security plan not required for less than 3,000 L except for desensitized explosives.
4.1	A quantity requiring placarding	Any quantity desensitized explosives	Security plan not required except for desensitized explosives.
4.2	A quantity requiring placarding	PG I and II only in quantities of 3,000 kg or more in a single packaging.	Security plan not required for PG III materials.
4.3	Any quantity	Any quantity	None.

PROPOSED REVISIONS TO THE LIST OF HAZARDOUS MATERIALS FOR WHICH TRANSPORTATION SECURITY PLANS WILL BE REQUIRED—Continued

Class	Current threshold	Proposed threshold	Change
5.1	A quantity requiring placarding	PG I and II liquids, perchlorates, ammonium nitrate (including fertilizers) in quantities of 3,000 L or more in a single packaging.	Security plan not required for PG III liquids or unlisted solids.
5.2	Any quantity of Organic peroxide, Type B, liquid or solid, temperature controlled.	Any quantity of Organic peroxide, Type B, liquid or solid, temperature controlled.	None.
6.1	A quantity requiring placarding; any quantity of PIH material.	Any quantity of PG I; 3,000 L for PG II and III.	Security plan not required for less than 3,000 L of PG II and III.
6.2	Select agents	Select agents	None.
7	Shipments requiring Yellow III label; highway route controlled quantity.	For radionuclides covered by the IAEA Code of Conduct, Category 1 and Category 2 sources per package; for all other radionuclides, 3000 A2 per package.	Security plan only required for Class 7 materials that pose transportation security risk.
8	A quantity requiring placarding	PG I only in quantities of 3,000 L or more in a single packaging.	Security plan not required for PG II and III materials.
9	Capacity >3,500 gallons for liquid/gas; volumetric capacity >468 cubic feet for solids.	Not subject	Security plan not required for Class 9 materials.

Our proposed revisions are explained in detail in the following section.

B. System Characteristics and Risks

A number of characteristics of the hazardous materials transportation system create the potential for misuse: (1) Substantial quantities of inherently dangerous materials are transported; (2) these materials are already mobile; (3) these materials are frequently transported in proximity to densely populated areas; and (4) placards or other markings required for safety may communicate hazard information to those who would misuse it.

Following are the hazards of greatest concern from a transportation security perspective:

Explosion and fire. Hazardous materials that pose a risk of explosion or fire may be used to attack large groups of people and critical infrastructure, such as buildings, tunnels, bridges, subways, communication centers, and electrical power grids.

Poison Inhalation Hazards (PIH). PIH materials, either as gases or volatile liquids, can be used to attack people in confined spaces such as buildings or subways. Bulk quantities present dangers to large areas and could affect a significant number of people in urban areas.

Poison liquids or solids. Poisons can be used to attack food or drinking water supplies or to attack groups of people indoors or outdoors.

Infectious substances. Depending on the mode of transmission for a given material, infectious substances can be used to contaminate food or water supplies or to expose large numbers of people to disease. The suspected or possible presence of these materials can result in long-term denial of the use of space, facilities, or goods.

Radioactive materials. These materials can cause severe chronic effects on large numbers of people, depending on exposure levels and the time exposed. The suspected or possible presence of these materials can result in long-term denial of the use of space, facilities, or goods.

Other materials of concern. Certain hazardous materials can be mixed to create explosions, intensified burning, and toxic effects or used as precursor chemicals in the manufacture of more dangerous substances. For example, mixing poisonous materials with acidic material can generate toxic gases (*e.g.*, sodium cyanide mixed with hydrochloric acid will generate hydrogen cyanide gas).

C. Security Risks for Specific Classes of Materials

A detailed discussion of the transportation security risks posed by specific classes of hazardous materials follows.

1. Division 1.1, 1.2, and 1.3 Explosives

Division 1.1., 1.2, and 1.3 explosive materials (*e.g.* , certain types of ammunition and cartridges, black powder, gun powder, demolition devices, depth charges, certain types of detonators, certain types of fireworks, rockets, and warheads) pose significant safety and security risks in transportation. A Division 1.1 explosive is one that presents a mass explosive hazard. A mass explosion is one that affects almost the entire load simultaneously. An explosion of Division 1.1 materials creates a pressure pulse that moves faster than the speed of sound. A Division 1.2 explosive has a projection hazard, which means that if the material explodes, it will project fragments outward at some distance. A Division 1.3 explosive presents a fire hazard and either a minor blast hazard or a minor projection hazard or both. If compromised in transit by detonation or as a secondary explosion to an improvised explosive device (IED), these materials could result in significant numbers of fatalities and substantial damage to transportation infrastructure and the surrounding area. When available, these explosives have been the preferred weapon of terrorists. This trend is not expected to change.

Significant quantities of Division 1.1, 1.2, and 1.3 explosives are transported by highway and rail for both commercial and military applications. The Department of Defense alone moves approximately 30,000 shipments a year by motor carrier. Motor carrier shipments are transported largely on the nation's interstate highway system, which bisects or adjoins many metropolitan areas offering significant iconic-value and critical infrastructure targets. About 500 carloads of these explosives are transported by rail each year. Like the interstate highway system, the rail transportation network intersects many densely populated areas.

The HMR currently require security plans for shipments of any quantity of Division 1.1, 1.2, or 1.3 explosives. PHMSA believes that this requirement provides an appropriate level of security, given the potential

vulnerabilities and risks associated with these materials and thus proposes to retain this requirement in the NPRM.

2. Division 1.4 Explosives

Division 1.4 explosives are those that present a minor explosive hazard. The explosive effects are largely confined to the package, with no projection of fragments of appreciable size or range. This category of explosives includes detonators used to detonate the Division 1.1, 1.2, and 1.2 explosives described above. Detonators are part of all IEDs. Over 500,000 tons of Division 1.4 explosives are transported by rail and highway in the United States every year.

Currently, the HMR require security plans for placarded amounts of Division 1.4 explosives. Our evaluation suggests that most Division 1.4 explosives do not pose a significant transportation security risk. However, Division 1.4 detonators are an attractive target for theft and use as initiating devices for IEDs. Therefore, in this NPRM, PHMSA proposes to require security plans only for shipments of any quantity of the following types of Division 1.4 explosives (listed by proper shipping name and UN identification number) because they are difficult to produce, are key components to IEDs, and can be used as initiators for other explosives:

(1) Detonator assemblies, non electric for blasting (UN 0361, UN 0500)

(2) Detonators for ammunition (UN 0365, UN 0366)

(3) Detonators, electric, for blasting (UN 0255, UN 0456)

(4) Detonators, non-electric, for blasting (UN 0267, UN 0455)

(5) Cord, detonating, flexible (UN 0289)

(6) Cord, detonating, mild effect, metal clad (UN 0104)

(7) Charges, shaped, flexible, linear (UN 0237)

(8) Charges, shaped, without detonator (UN 0440, UN 0441)

3. Division 1.5 Explosives

Division 1.5 explosives are very insensitive explosives. This division covers substances that have a mass explosion hazard but are so insensitive that they pose very little probability of initiation or of transition from burning to detonation under normal conditions of transport. In practice, Division 1.5 explosives are activated using a higher-energy explosive charge. Roughly 4.3 million tons of Division 1.5 explosives are transported by rail and highway in the United States every year.

Division 1.5 explosives could be used in attacks on people or infrastructure. While these explosives are insensitive to effects from normal transportation accident conditions, such as fire or violent shock, Division 1.5 explosives can be made to detonate if initiated by an explosive charge. The detonation effects, while less severe than those of Division 1.1, 1.2, and 1.3 explosives, are substantial. An example of a Division 1.5 explosive is ammonium nitrate-fuel oil mixture (ANFO) that, with a properly designed explosive chain, can produce a substantial blast wave. Insensitive bulk blasting agents like ANFO have been used by terrorists in the past, most notably in the attack on the Murrah Federal Building in Oklahoma City.

Currently, the HMR require security plans for placarded shipments of Division 1.5 explosives. In this NPRM, PHMSA proposes to require security plans for shipments of Division 1.5 explosives transported in any quantity.

4. Division 1.6 Explosives

Division 1.6 explosives are extremely insensitive articles that do not have a mass explosion hazard and that contain only extremely insensitive detonating substances with only a negligible probability of accidental initiation or propagation. Currently, the HMR require security plans for shipments of placarded amounts of Division 1.6 materials. However, our evaluation concludes that these materials do not pose a transportation security risk. Therefore, in this NPRM, PHMSA proposes to delete Division 1.6 explosives from the list of materials for which security plans are required.

5. Division 2.1 Flammable Gases

Division 2.1 materials are flammable gases that may be transported at ambient pressure in a compressed or liquefied compressed state. Flammable gases will burn if mixed with an appropriate amount of air; confined burning of a flammable gas can lead to detonation. A commonly transported example of a flammable gas is propane, a liquefied compressed gas. When liquid propane is released into the atmosphere, it quickly vaporizes into the gaseous form that is its normal state at atmospheric pressure. This happens very rapidly, and in the process, the propane combines readily with air to form fuel-air mixtures that are ignitable over a range of 2.2 to 9.5 percent propane by volume. If an ignition source is present in the vicinity of a highly flammable mixture, the vapor cloud ignites and burns very rapidly (characterized by some experts as ''explosively'').

Over 120 million tons of flammable gas are used and distributed in the United States on an annual basis. A significant portion is transported by pipeline; however, more than 200,000 carloads of these materials are transported by rail, and over 40 million tons are transported by highway each year. These materials generally are consumer products and can be purchased without special licenses or security procedures.

Based on their hazard characteristics and the frequency with which propane and other Division 2.1 materials are transported in this country, PHMSA believes that materials meeting the definition for classification as Division 2.1 materials present a sufficient security risk to warrant the imposition of security plan requirements. Terrorists overseas have used flammable gas in attacks on people and buildings, using an IED to detonate the gas. The resulting disbursement and ignition of the gas creates a significantly larger fireball and heat signature than typical of an explosive detonation.

The HMR currently require security plans for shipments of Division 2.1 materials in amounts that require placarding—that is, amounts greater than 119 gallons in a single packaging or container. In evaluating specific security risks associated with shipments of Division 2.1 materials, PHMSA has concluded that shipments in quantities less than 3,000 L in a single package do not pose a transportation security threat warranting development and implementation of security plans. As discussed above, the major security threat associated with these materials is their potential use to attack large groups of people and critical infrastructure; a substantial quantity is necessary to achieve a significant effect. Therefore, this NPRM proposes to require security plans for shipments of Division 2.1 materials in amounts greater than or equal to 3,000 L in a single package or container. Security plans would not be required for shipments of Division 2.1 materials in lesser quantities.

6. Division 2.2 Compressed Gases

Division 2.2 compressed gases are those that are neither flammable nor poisonous. Division 2.2 compressed gases are regulated for transportation safety purposes because they pose a physical hazard due to the increased pressure under which the material is maintained. In addition, Division 2.2 compressed gases will displace oxygen if released in a confined space. Without oxygen, people very quickly lose consciousness and will die within three or four minutes.

Currently, the HMR require shippers and carriers of Division 2.2 gases in amounts that require placarding to develop and implement security plans.

However, the hazard characteristics of these materials do not lend themselves to terrorist or criminal use. Therefore, PHMSA has concluded that Division 2.2 compressed gases generally do not pose a security threat sufficient to warrant specific security planning measures. However, we are proposing to require security plans for oxygen and for other Division 2.2 gases that are oxidizers. In addition to being a Division 2.2 material, oxygen and other oxidizers enhance the combustion of other materials. Oxygen and similar oxidizers will increase the likelihood and intensity of a fire or other chemical reaction. At least 7 million tons of oxygen are transported by motor carriers each year. Because of its oxidizing characteristics and the volume transported, large shipments of oxygen should be subject to security planning requirements. Therefore, this NPRM proposes to require shippers and carriers of oxygen in quantities greater than or equal to 3,000 L in a single package or container to develop and implement security plans. In addition, we are proposing to require security plans for shipments of any Division 2.2 compressed gases with a subsidiary hazard of Division 5.1 oxidizer when transported in quantities of at least 3,000 L in a single package or container. A list of such materials is provided below.

Proper shipping name	Hazard class	Identification Nos.	Label code
Air, refrigerated liquid, *(cryogenic liquid)*	2.2	UN1003	2.2, 5.1
Air, refrigerated liquid, *(cryogenic liquid) non-pressurized*	2.2	UN1003	2.2, 5.1
Carbon dioxide and oxygen mixtures, compressed	2.2	UN1014	2.2, 5.1
Compressed gas, oxidizing, n.o.s.	2.2	UN3156	2.2, 5.1
Gas, refrigerated liquid, oxidizing, n.o.s. *(cryogenic liquid)*	2.2	UN3311	2.2, 5.1
Liquefied gas, oxidizing, n.o.s.	2.2	UN3157	2.2, 5.1
Nitrous oxide	2.2	UN1070	2.2, 5.1
Nitrous oxide, refrigerated liquid	2.2	UN2201	2.2, 5.1

7. Division 2.3 and Division 6.1 PIH Materials

Poison inhalation hazard (PIH) materials are gaseous or liquid materials that are known or presumed on the basis of tests to be toxic to humans and to pose a hazard to health in the event of a release during transportation. PIH materials form a toxic plume upon release into the atmosphere. Dispersion of these vapors can endanger significant numbers of people. Examples of PIH materials include phosgene, chlorine, hydrogen fluoride, and anhydrous ammonia. Each year about 100,000 carloads of PIH materials are shipped by rail, and over 8 million tons of PIH materials are transported by highway. Because of their safety risks, PIH materials are among the most stringently regulated of all hazardous materials.

The most infamous example of the safety risks posed by PIH materials is the 1984 accident in Bhopal, India, in which approximately 10,000 gallons of methyl isocyanate was released from a chemical plant, causing nearly 3,000 deaths and more than 15,000 injuries. A PIH material (sarin) was released by terrorists in a Tokyo subway in 1995, resulting in 12 fatalities and hundreds of injuries. More recently, on January 6, 2005, in Graniteville, South Carolina, a 42-car freight train, carrying several tank cars of chlorine, collided with a standing train. The accident resulted in the puncture of one tank car and the release of a cloud of chlorine gas that killed nine people. In addition, terrorists in Iraq have employed tank trucks loaded with chlorine in several attacks.

The transportation security risks of these materials have been amply demonstrated. The HMR currently require security plans for shipments of PIH materials in any quantity. We believe this requirement provides an appropriate level of security, given the potential vulnerabilities and risks associated with these materials. We are not proposing any changes to this requirement in this NPRM.

8. Class 3 Flammable Liquids

Flammable liquids burn vigorously, giving off large quantities of intense heat. Some may produce flammable atmospheres in confined spaces that, when ignited, could cause significant damage through deflagration or detonation. At least 37 million shipments of flammable liquids are moved in commerce in the United States every year, including upwards of 24 million shipments of gasoline from bulk storage facilities through the distribution chain.

Class 3 materials could be used in a terrorist attack to trigger a large, intense fire that could cause deaths, injuries, and damage to buildings and infrastructure. To be effective, such an attack would necessarily involve a large quantity of flammable liquid. The HMR currently require security plans for shipments of flammable liquids in amounts that require placarding. In this NPRM, PHMSA proposes to require security plans for shipments of Class 3 materials in amounts greater than or equal to 3,000 L in a single package or container. Security plans would not be required for shipments in lesser quantities.

9. Class 3 and Division 4.1 Desensitized Explosives

Desensitized explosive substances are explosive materials that have been rendered non-explosive, according to the UN Manual of Tests and Criteria, by means of adding a diluting liquid or solid. The diluted substances, once tested and found not in Class 1, are regulated under the HMR as Division 4.1 flammable solids or Class 3 flammable liquids, depending on their physical state and hazardous properties. Water is the most commonly used diluent/desensitizing material, even if it is not miscible (dissolves in) with the explosive. Other diluents can include flammable or non-flammable liquids or solids that have no explosive properties in and of themselves, but prevent the ability of the explosive substance to initiate or sustain a detonation or deflagration. Plasticizing liquids like triacetin, dibutyl phthalate, vegetable oil, or paraffin oil are sometimes used. Simple solid diluents for explosives include bentonite clay, plastic granules, gypsum and waxes of various types. Some diluents like water are easily separated from the explosive and the explosive is easy to reconstitute by drying. Some diluents can be extracted by dissolving them away from the explosive (or vice versa) with various solvents. Large quantities of desensitized explosives are moved by commercial rail and motor carrier every year in support of mining and other industrial operations.

Desensitized explosives have been used in terrorist attacks here and overseas. Urea nitrate, for example, has been used in a number of terrorist

attacks, most notably the first vehicle-borne improvised explosive device attack on the World Trade Center in 1993. Currently, the HMR require security plans for placarded shipments of Class 3 or Division 4.1 desensitized explosives. Because many desensitized explosives can be readily reconstituted into explosive materials, this NPRM proposes to require security plans for shipments of any quantity of Class 3 or Division 4.1 desensitized explosives. Other materials within Division 4.1 would not be subject to the security plan requirement under this NPRM.

10. Division 4.2 Spontaneously Combustible Material

Division 4.2 spontaneously combustible materials are pyrophoric or self-heating materials. Division 4.2 materials in Packing Group I are pyrophoric materials. A pyrophoric material is a liquid or solid that, even in small quantities and without an external ignition source, can ignite when it comes in contact with air. Division 4.2 materials in Packing Groups II and III are self-heating materials. A self-heating material is likely to self-heat when in contact with air. About one million tons of these materials are shipped in commerce each year.

Currently, the HMR require security plans for placarded shipments of Division 4.2 materials. In this NPRM, PHMSA proposes to retain the security plan requirement for shipments of 3,000 kg or more in a single packaging of Division 4.2 materials in Packing Groups I and II and to eliminate the security plan requirement for Division 4.2 materials in Packing Group III because assessment indicates that the security risks associated with these materials are not sufficient to warrant development and implementation of security plans.

11. Division 4.3 Dangerous When Wet Material

Division 4.3 materials are water reactive—they emit flammable or toxic gases upon contact with water. The most hazardous Division 4.3 materials spontaneously ignite on contact with water. These are industrial chemicals easily available with no security restrictions. Roughly one million tons are shipped by highway each year, in addition to about 3,000 yearly shipments by rail. Division 4.3 materials may be of interest to terrorists planning a toxic gas attack on crowded venues like subways, buses, shopping centers, or movie theaters.

Currently, the HMR require security plans for shipments of Division 4.3 materials in any quantity. PHMSA believes this requirement provides an appropriate level of security, given the potential vulnerabilities and risks associated with these materials; therefore, this NPRM proposes to retain this requirement.

12. Division 5.1 Oxidizing Material

An oxidizer is a material that may cause or enhance the combustion of other materials, generally by yielding oxygen. Some oxidizers may explode when heated. Perchlorates are a subset of Division 5.1 materials. Both potassium perchlorate and ammonium perchlorate are used extensively in the pyrotechnics industry; ammonium perchlorate is a component of solid rocket fuel. Ammonium nitrate and ammonium nitrate fertilizers are also examples of oxidizing materials. As a strong oxidizing agent, ammonium nitrate makes an explosive mixture when combined with a fuel such as a hydrocarbon, usually diesel fuel (oil) or, sometimes, kerosene.

Division 5.1 oxidizing materials are frequently used as components of IEDs. On April 19, 1995, Timothy McVeigh blew up the Murrah Federal Building in Oklahoma City with a bomb made from fertilizer and fuel oil. Division 5.1 materials are industrial chemicals easily available with no security restrictions. Approximately nine million tons of Division 5.1 materials are shipped by motor carrier each year. The railroads transport about 50,000 shipments yearly.

Currently, the HMR require security plans for placarded shipments of Division 5.1 materials. This NPRM proposes to require a security plan for shipments of Division 5.1 materials in Packing Groups I and II, perchlorates, and ammonium nitrate (including fertilizers) in a single packaging, in a quantity of 3,000 kg or more for solids or 3,000 L or more for liquids. Except for perchlorates and ammonium nitrate, we are proposing to eliminate the security plan requirement for Division 5.1 materials in Packing Group III.

13. Division 5.2 Organic Peroxides

Organic peroxides are temperature sensitive, self-reacting materials that pose both a fire and explosion hazard, and may be both toxic and corrosive. Once an organic peroxide reaches a certain temperature (called the self-accelerating decomposition temperature or SADT), its reaction will proceed uncontrollably. Organic peroxides are assigned to types A through G according to their reactivity. The most dangerous organic peroxides will detonate much like a low-energy Division 1.1 explosive. The most dangerous organic peroxides, assigned to Type A, are prohibited from transportation; those that are permitted in transportation are stringently regulated in terms of the quantities that may be transported and the type of packaging that may be utilized. Organic peroxides with SADTs in the ambient temperature range must be transported with temperature controls. Type B organic peroxides are the most reactive and, hence, the most dangerous organic peroxides permitted in transportation.

Organic peroxides were used in the July 2005 terrorist bombings in London, and were planned for use by terrorists recently plotting to destroy aircraft flying from the United Kingdom to the United States. Terrorists call these materials ''Mother of Satan,'' an indication of their attractiveness as weapons or components of weapons. Minimal amounts of Division 5.2 organic peroxides are transported on a regular basis.

The HMR currently require security plans for liquid or solid Type B, temperature controlled Division 5.2 organic peroxides transported in any quantity. PHMSA believes that this requirement provides an appropriate level of security, given the potential vulnerabilities and risks associated with these materials and proposes to retain this requirement in this NPRM.

14. Division 6.1 Poisonous Materials (Other Than PIH Materials)

Division 6.1 materials may be toxic to humans through oral ingestion or dermal exposure. As defined in the HMR, Division 6.1 materials have a range of toxicity values; the most toxic materials are assigned to Packing Group I. Division 6.1 materials can be used to contaminate food and water supplies; however, the effectiveness of such an attack would depend on the toxicity level of the material and the quantity utilized. More than eight million tons of these materials are shipped in commerce on a yearly basis. Of this, approximately two million tons are transported by highway; railroads move more than 30,000 shipments each year.

The HMR currently require security plans for placarded shipments of Division 6.1 materials in all packing groups. In this NPRM, PHMSA proposes to require security plans for shipments of Division 6.1, Packing Group I materials in any amount and shipments of 3,000 L or more of Division 6.1, Packing Groups II and III materials. Security plans would not be required for shipments of Division 6.1, Packing Groups II and III in amounts less than 3,000 L.

15. Division 6.2 Infectious Substances and Select Agents

A Division 6.2 infectious substance is a material that contains a pathogen, which is a microorganism or other agent that can cause disease in humans or animals. The degree of risk associated with the transportation of a given Division 6.2 material depends on the nature of the material, including the virulence of the material, the way it is transmitted between humans or animals, the manner and ease of transmission between humans or animals, and the availability of preventive measures and treatment protocols.

Select agents are infectious substances and toxins determined by the Center for Disease Control and United States Department of Agriculture to present a significant public health risk. Examples include ebola viruses, ricin, small pox, avian flu virus, foot-and-mouth disease virus, and anthrax. Use and movement of these materials are very strictly controlled.

Because of the potential for select agents to be developed as weapons to cause serious and significant outbreaks of disease in humans and animals, the HMR require security plans for shipments. This requirement provides an appropriate level of security, given the potential vulnerabilities and risks associated with these materials. Therefore, PHMSA proposes to retain this requirement in this NPRM. However, in addition to the proposed requirement for pathogens that affect humans and animals, expansion of the security plan requirements to include pathogens that affect plants is also being considered.

In accordance with 9 CFR part 121 we currently require security plans for biological agents and toxins with the potential to pose a severe threat to public health and safety, to animal health, or to animal products. As a result of concerns expressed by USDA's Animal and Plant Health Inspection Service (APHIS), PHMSA believes that the expansion of the security plan requirements to include biological agents and toxins that have the potential to pose a severe threat to plant health or to plant products is appropriate. To achieve this, the current security plan requirements for Division 6.2 materials to include materials listed in 7 CFR part 331 would be expanded. Part 331 implements the provisions of the Agricultural Bioterrorism Protection Act of 2002 setting forth the requirements for possession, use, and transfer of select agents and toxins. APHIS supports the inclusion of select agent plant pathogens to the list Division 6.2 materials requiring security plans. Stakeholders are urged to fully consider the implications of requiring security plans for select agent plant pathogens and to provide comments.

16. Class 7 Radioactive Materials

The United States transportation system annually moves millions of shipments of radioactive materials, the largest share consisting of small packages containing radiopharmaceuticals. The HMR security plan requirements currently apply to a person who offers for transportation or transports a highway route-controlled quantity (HRCQ) of a Class 7 (radioactive) material. The HMR also require security plans for any shipment that requires placarding under subpart F of part 172; this includes shipments of packages with radioactive Yellow III labels and exclusive use shipments of low specific activity material and surface contaminated objects.

Our evaluation suggests that these thresholds must be expanded to include additional materials that, by virtue of their relative radiation levels and physical characteristics, pose similar security threats. Security concerns surrounding the transport of radioactive materials reflect their potential use in radiological dispersal devices (RDDs) (or ''dirty bombs''), designed to spread radioactive material from the detonation of conventional explosives or other means, and radiological exposure devices (REDs), designed to expose people to radiation. The consequences of an RDD or RED event would depend on the specific radioactive material and quantity involved, the dispersal or exposure mechanism, and the environmental conditions.

This NPRM proposes to adopt the security thresholds recommended by the International Atomic Energy Agency (IAEA) for radioactive materials in transport. These levels reflect research conducted by the U.S. Department of Energy, the U.S. Nuclear Regulatory Commission (NRC), and the IAEA on the attractiveness of radionuclides for malevolent use. The IAEA ''Code of Conduct on the Safety and Security of Radioactive Sources'' (IAEA/CODEOC/2004) was revised to take account of international concerns following the events of September 11, 2001. The United States played a key role in revising the Code of Conduct and has been successful in gaining national commitments to the Code of Conduct by more than 80 countries. One of the essential features of the Code of Conduct is the cataloging of radioactive sources based on their relative potential to cause immediate injury or death. There are three categories that range from Category 1, posing the highest short-term exposure risk to Category 3, posing relatively little risk of permanent injury through brief exposure.

The IAEA has used the Code of Conduct in the development of the recently issued Nuclear Security Series Guide, ''Security of Radioactive Material during Transport'' (in draft, expected to be issued 2009). This document is intended to provide IAEA Member States with guidance on implementing security measures for the transport of radioactive material. The threshold values outlined in this Notice were derived on the basis of the potential radiological consequences of malicious acts involving radioactive material. The Guide calls for enhanced security of radioactive material in transport, including adoption and compliance with security plans for consignments that include at least one package meeting one or both of the following activity threshold values:

- For radioactive sources and other forms of radioactive material containing radionuclides covered by the Code of Conduct, Category 1 and Category 2; or
- For all other radionuclides, 3000 A_2 per package.

The Code of Conduct values are universally understood and implemented for security of radioactive sources internationally as well as domestically by the NRC. For radionuclides not included in the Code of Conduct, a value of 3000 A_2 can be used to identify packages that are subject to the enhanced transport security measures, since the A_2 value of a radionuclide never exceeds the A_1 value.

17. Class 8 Corrosive Materials

For purposes of the HMR, a Class 8 corrosive material is a liquid or solid that causes full thickness destruction of human skin at the site of contact within a specified period of time. Class 8 materials in Packing Group I cause full thickness destruction of human skin tissue within 60 minutes after an exposure time of 3 minutes. These materials can cause irreversible damage to human tissue. Examples include nitric acid, sodium hydroxide (caustic soda or lye), and hydrochloric acid. Class 8 materials also exhibit corrosive properties towards other materials, most notably aluminum and steel.

Given the rate at which they react with human skin, aluminum and steel, these materials could be used to sabotage infrastructure, cause mass injury through proper dispersion, and

present a method for sabotaging other hazardous material containers such as cylinders, tank cars, and cargo tank motor vehicles. Approximately 90 million tons of these materials are transported in commerce each year, including more than 50 million tons transported by motor carrier. Rail carriers annually move more than 270,000 shipments of Class 8 corrosive materials.

The HMR currently require security plans for placarded shipments of Class 8 materials in all packing groups. In this NPRM, PHMSA proposes to retain security plan requirements for shipments of Class 8, Packing Group I materials in amounts greater than or equal to 3,000 L in a single package or container. Lesser amounts of PG I and PG II and III corrosive materials pose little, if any, security risk. Therefore, security plans would not be required for shipments of Class 8 materials, Packing Group I, in amounts less than 3,000 L, nor would security plans be required for shipments of Class 8 materials in Packing Groups II or III.

18. Class 9 Materials

Class 9 materials are materials that present a hazard during transportation but do not meet the definition of any other hazard class. Class 9 covers elevated temperature materials and materials that pose a risk to the environment—hazardous substances, hazardous wastes, and marine pollutants. Although it is possible that Class 9 materials could be deliberately used to contaminate the environment, the likelihood of such a terrorist action is remote because of the quantities of material that would be required and the relatively minor result that would be achieved.

Currently, the HMR require security plans for Class 9 materials transported in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids. This NPRM proposes to eliminate this requirement; the security risks associated with the transportation of these materials are not sufficient to warrant development and implementation of security plans.

IV. Additional Revisions to Security Requirements

This NPRM also proposes a number of amendments to clarify and enhance current security requirements, including requirements for security plans and for training. These proposals are detailed below.

A. Revisions to Security Plan Requirements

Section 172.802 of the HMR establishes the components that must be included as part of a hazardous materials transportation security plan. Paragraph (a) of this section requires that a security plan include an assessment of possible transportation security risks associated with the hazardous materials covered by the security plan and appropriate measures to address the identified security risks. This assessment is part of the plan and must be in writing and maintained with the plan in accordance with § 172.802(b). It has come to PHMSA's attention that there is some confusion as to whether the security risk assessment must be in writing. To clarify this, the NPRM proposes to specify that the security plan, including the security risk assessment, must be in writing and must be retained for as long as the plan remains in effect.

In addition, the NPRM proposes to clarify the application of the required risk assessment to site-specific and location-specific security issues. As specified in the proposed rule text, the risk assessment must include an assessment of specific risks that exist on specific routes or in specific locations.

Also proposed is a revised paragraph (b) to clarify the following security plan requirements:

- The security plan must identify, by job title, the senior management official responsible for the overall development and implementation of the plan.
- The security plan must be reviewed at least annually and updated if circumstances change (*e.g.*, acquisitions, mergers, operating rights, materials transported, expanded or reduced service levels).
- The security plan must include a plan for training hazmat employees.
- The security plan must include security duties for each position or department that is responsible for the plan's implementation and the process for notifying employees when specific elements of the security plan must be implemented.

B. Security Training

Companies that are subject to the security plan requirements in subpart I of part 172 are required to provide in-depth training concerning their security plan and its implementation. The in-depth security training must cover company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure. As written, the in-depth security-training requirement appears to apply to all hazmat employees; this was not the intention. The in-depth security training requirement was meant to apply only to hazmat employees who perform regulated functions related to the transportation of the materials covered by the security plan or who are responsible for implementing the security plan. This NPRM proposes to clarify the in-depth security-training requirement by specifying its application to hazmat employees who are directly involved with implementing security plans.

As discussed above, this NPRM proposes to require security plans to be reviewed at least once each year and updated as necessary to reflect changing circumstances. The in-depth security training requirement must be provided to hazmat employees responsible for the plan's implementation once every three years, in accordance with § 172.704(c). This NPRM also proposes to require in-depth security training once every three years or, if the security plan is revised during the recurrent training cycle, within 90 days of implementation of the revised security plan. In this way, those hazmat employees responsible for implementing the security plan will be trained in a timely manner concerning any changes or revisions to the plan.

C. Coordination With TSA

DHS is the lead Federal agency for transportation and hazardous materials security. DOT consults and coordinates on security-related hazardous materials transportation matters to ensure consistency with DHS requirements and broader security objectives. Both departments work to ensure that the regulated industry is not confronted with inconsistent government-issued security guidance or requirements.

The Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.*) authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary has delegated this authority to PHMSA. Authority to enforce the HMR has been delegated to the FAA ''with particular emphasis on the transportation or shipment of hazardous materials by air;'' the FRA ''with particular emphasis on the transportation or shipment of hazardous materials by railroad;'' PHMSA ''with particular emphasis on the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or

test of multi-modal containers that are represented, marked, certified, or sold for use in the transportation of hazardous materials;'' and the FMCSA ''with particular emphasis on the transportation or shipment of hazardous materials by highway.'' 49 CFR part 1, subpart C. Thus, enforcement of the security plan and training regulations is shared among the DOT operating administrations, with each placing particular emphasis on their respective authorities.

Under Section 101(a) of the Aviation and Transportation Security Act (ATSA) (codified at 49 U.S.C. 114) and 49 CFR 1502.1, TSA has broad responsibility and authority for ''security in all modes of transportation * * *'' TSA has additional responsibilities for surface transportation security, as specified in 49 U.S.C. 114(f), through delegation by the Secretary of Homeland Security under the 9/11 Commission Act.

In sum, TSA's authority with respect to transportation security is comprehensive and supported with specific powers related to the development and enforcement of regulations, security directives, security plans, and other requirements. Under this authority, TSA may identify a security threat to any mode of transportation, develop a measure for dealing with that threat, and enforce compliance with that measure. Moreover, in addition to inspecting for compliance with specific regulations, TSA may conduct general security assessments. Under its authority, TSA may assess threats to transportation security; monitor the state of awareness and readiness throughout the various sectors; determine the adequacy of an owner or operator's transportation-related security measures; and identify security gaps. TSA, for example, could inspect and evaluate for emerging or potential security threats based on intelligence indicators to determine whether the owner or operator's strategies and security measures are likely to deter deficiencies.

When PHMSA adopted its security regulations, it was stated that these regulations were ''the first step in what may be a series of rulemakings to address the security of hazardous materials shipments.'' 68 FR 14511. PHMSA also noted that TSA ''is developing regulations that are likely to impose additional requirements beyond those established in this final rule'' and stated that it would ''consult and coordinate with TSA concerning security-related hazardous materials transportation regulations * * *'' Id. In this regard, note that under § 1512 of the 9/11 Commission Act and delegated authority from the Secretary of Homeland Security, TSA must promulgate regulations establishing standards and guidelines for developing and implementing vulnerability assessments and security plans for ''high-risk'' railroad carriers. After TSA promulgates these regulations, these railroad carriers would be required to submit vulnerability assessments and security plans to DHS for review and approval. In addition, § 1517 of the 9/11 Commission Act requires DHS to develop and issue regulations for a training program to prepare railroad frontline employees for potential security threats and conditions.

The TSA regulations are intended to supersede the PHMSA security plan and security training requirements for railroad carriers that will be subject to the TSA regulations. Once these TSA regulations have been issued, the PHMSA security plan and security training requirements for railroad carriers that will be subject to the TSA regulations will be reevaluated and revised as appropriate.

We worked closely with TSA to align our proposed list of materials subject to security plans and the TSA Highway Security Sensitive Hazardous Materials (HSSM) list. TSA's HSSM list is to be used in conjunction with voluntary security practices (referred to as Security Action Items or SAIs) to increase the security of certain hazardous materials transported by motor vehicle. As a result, the PHMSA proposal and the TSA list are very similar; however, there are some minor differences. As provided below, in four instances our proposal is more restrictive than the TSA list.

1. We require all materials that meet the definition of a PIH material to have a security plan; TSA set thresholds of 5 lbs for Hazard Zone A and B and bulk for Zones C and D.

2. We include flammable liquids in PG III (*i.e.*, diesel fuel, kerosene, jet fuel, fuel oil) and TSA does not.

3. Our proposal includes any quantity of desensitized explosives in Division 4.1 and TSA lists materials by identification number.

4. For infectious substances, the TSA list does not include the USDA list of select agents or overlapping agents and toxins in 43 CFR 73.4.

The security plan requirements established by the HMR are to be used as a baseline for security planning. Though there are some minor differences between our proposal and the TSA list, the overall approach taken by the two agencies in identifying materials that should be subject to security based requirements is consistent and supported by industry associations, offerors, carriers, and private citizens, as evidenced by the comments submitted in response to our ANPRM. Please submit any additional comments regarding the alignment of our proposed list with the TSA HSSM list during the comment period for this NPRM. Interested persons may submit their comments through the Federal eRulemaking Portal (on the Web site *http://www.regulations.gov*) under PHMSA docket number PHMSA–06–25885 by the date provided in the **DATES** section of this rulemaking.

TSA, PHMSA, FMCSA, and FRA will continue to work together in the development of hazardous materials transportation security planning regulations and standards. TSA may issue security planning regulations in the future; if such an action is taken we will reconsider our security plan requirements for the motor carriers that would be subject to TSA's regulations. As TSA develops security planning regulations applicable to hazardous materials, TSA will carefully consider how those regulations should relate to the HMR and will work with PHMSA, FMCSA, and FRA to avoid unnecessary duplication.

As it implements its transportation security authority, TSA may identify a need to review transportation security plans developed and implemented in accordance with subpart I of part 172 of the HMR. Under ATSA, TSA has the authority to ''ensure the adequacy of security measures for the transportation of cargo'' 49 U.S.C. 114(f)(10) and to ''oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities'' 49 U.S.C. 114(f)(11). Therefore, parties subject to this regulation must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter and inspect and must provide TSA inspectors with a copy of any security-related document required by the HMR or pursuant to TSA's statutory or regulatory authorities. This includes security plans and training documents required under 49 CFR part 172. However, TSA does not have the authority to directly enforce DOT safety or security requirements established in the HMR. If, in the course of an inspection of a railroad or motor carrier or a rail or highway hazardous material shipper or receiver, TSA identifies evidence of non-compliance with a DOT safety or security regulation, TSA will provide the information to FRA (for rail) or FMCSA (for motor carriers) and PHMSA for appropriate action.

Similarly, if a DOT inspector identifies evidence of non-compliance with a TSA security regulation or identifies other security deficiencies, DOT will provide the information to TSA for appropriate action.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). This NPRM was reviewed by the Office of Management and Budget.

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Because this NPRM proposes to narrow the list of materials for which security plans are required, it will reduce the number of shippers and carriers required to develop security plans in accordance with subpart I of part 172 of the HMR. It is estimated that about 10,119 entities would no longer be subject to current security plan and associated in-depth training requirements. The annual benefit resulting from the proposals in this NPRM is estimated to be about $3.6 million—$2.8 million in avoided costs related to development of security plans and $0.8 million in cost savings for associated training. Evaluated over a 15-year period at the standard discount rate of 7%, the estimated net present value of the cost savings is approximately $32.6 million. The regulatory impact assessment is accessible by PHMSA docket number (PHMSA–06–25885) through the Federal eRulemaking Portal (*http://www.regulations.gov*).

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 (''Federalism''). Any rule resulting from this rulemaking will preempt State, local and Indian tribe requirements but will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria set forth in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. PHMSA has determined that, while the requirements of the proposed rule would apply to a substantial number of small entities, the economic impact on those small entities would not be substantial.

As indicated above, about 10,119 entities would no longer be subject to current security plan and in-depth training requirements if the proposals in this NPRM are adopted. These entities are persons who offer for transportation or transport hazardous materials in commerce. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, the thresholds published by SBA for industries subject to the HMR are utilized. Just under 90% of shippers and carriers affected by the proposals in this NPRM are small businesses.

Based on an analysis of the potential benefits of the proposals in this NPRM, PHMSA concludes that, while the proposed rule would apply to a substantial number of small entities, it will not have a significant economic impact on those small entities. For a small business that would no longer be subject to the security plan requirements and associated in-depth training requirements, the cost savings would total between $332 and $437 annually.

E. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137–0612, ''Hazardous Materials Security Plans'' with an expiration date of May 31, 2009. This NPRM may result in a decrease in the annual burden and costs under OMB Control Number 2137–0612 due to proposed changes to revise the list of materials for which hazardous materials transportation security plans are required.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the information collection and recordkeeping burden as proposed in this rule would be decreased as follows:

OMB Control No. 2137–0612:

Decrease in Annual Number of Respondents: 10,119.

Decrease in Annual Responses: 10,119.

Decrease in Annual Burden Hours: 55,655.

Decrease in Annual Burden Costs: $2,782,750.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number 202–395–6974. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and

recordkeeping requirements to OMB for approval.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $132 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act (NEPA), §§ 4321–4375, requires Federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR § 1508.9(b).

Purpose and Need. The current security plan requirements, which became effective on September 25, 2003, apply to shipments of placarded loads of hazardous materials and to select agents. PHMSA has received two petitions for rulemaking requesting a review and reevaluation of the requirements. The petitioners cite several examples of hazardous materials that, based on hazard class and quantity, require placarding under the HMR and, therefore, are subject to security plan requirements. Examples include automobile batteries, inks, paint, and flavoring extracts. Petitioners suggest that it is highly unlikely a terrorist would use such materials to cause loss of life, destruction of property, or damage to the environment.

PHMSA agrees with the petitioners that the list of materials for which security plans are required should be revised. Since 2003, both the industry and the government have had four years of experience in evaluating security risks associated with specific hazardous materials and transportation environments and identifying appropriate measures to address those risks. The revisions proposed in this NPRM are based on an evaluation of possible security threats posed by specific types and classes of hazardous materials and are intended to ensure that the security plan requirement applies only to those materials that present a significant security threat in transportation based on the hazard class and packing group of the material and the quantity or volume transported.

Alternatives. PHMSA considered the following alternatives:

No action—Under this alternative, security plan requirements would continue to apply to shipments of placarded loads of hazardous materials and to select agents, including some materials that do not pose a transportation security risk. This alternative is not risk-based and results in the over-regulation of materials that are not likely to be used in a terrorist or criminal act. This action is not recommended.

Require security plans only for materials subject to FMCSA permit regulations—Under this alternative, security plan requirements would apply only to shipments of hazardous materials subject to safety permit requirements in accordance with FMCSA regulations at 49 CFR part 385. A safety permit is required for certain shipments of radioactive materials, explosives, PIH materials, and compressed or refrigerated methane or liquefied natural gas. This alternative would not include a number of materials that pose a significant security risk, including flammable gases, flammable liquids, desensitized explosives, dangerous when wet materials, oxidizing materials, organic peroxides, poisons, and select agents. Selection of this alternative could result in significant adverse environmental impacts as a result of a terrorist or criminal action using such materials. This alternative is not recommended.

Adopt UN Recommendations Criteria for Security Plan Requirements—Under this alternative, security plans would be required for the materials identified in the UN Recommendations as high consequence dangerous goods—that is, materials with the potential for mis-use in a terrorist incident that may produce serious consequences such as mass casualties or mass destruction. The UN list of high consequence dangerous goods includes most of the hazardous materials that pose a significant transportation security risk. The materials that would no longer be subject to security planning requirements are unlikely to be targeted for criminal or terrorist use; therefore, the adverse environmental consequences of this alternative are expected to be minimal. With some modifications, as detailed in this NPRM, this is the selected alternative.

Analysis of Environmental Impacts. Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard—from a high hazard Packing Group I to a low hazard Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Releases of hazardous materials, whether caused by accident or deliberate sabotage, can result in explosions or fires. Radioactive, toxic, infectious, or corrosive hazardous materials can have short- or long-term exposure effects on humans or the environment. Generally, however, the hazard class definitions are focused on the potential safety hazards associated with a given material or type of material rather than the environmental hazards of such materials.

Under the HMR, hazardous materials may be transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures,

loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be reduced or eliminated through prompt clean-up/decontamination of the accident scene.

The security plan requirements in subpart I of part 172 of the HMR are intended to reduce the potentially catastrophic consequences, including adverse environmental consequences, of a criminal or terrorist incident involving hazardous materials in transportation. A security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures implemented as part of the plan may vary with the level of threat at a particular time. At a minimum, the security plan must address personnel security, unauthorized access, and en route security. For personnel security, the plan must include measures to confirm information provided by job applicants for positions involving access to and handling of the hazardous materials covered by the plan. For unauthorized access, the plan must include measures to address the risk of unauthorized persons gaining access to materials or transport conveyances being prepared for transportation. For en route security, the plan must include measures to address security risks during transportation, including the security of shipments stored temporarily en route to their destinations.

This NPRM proposes to narrow the list of materials for which a security plan would be required to ensure that the security plan regulations are targeted to those materials that pose a significant transportation security risk. It is possible to envision scenarios in which hazardous materials other than those identified in this NPRM could be used to inflict serious damage in a terrorist or criminal incident. However, our assessment of the security risks associated with such materials, detailed elsewhere in this preamble, suggests that they are unlikely to be targeted. PHMSA therefore concludes that there are no significant environmental impacts associated with this NPRM.

Consultation and Public Comment. As discussed above, PHMSA published an ANPRM and hosted a public meeting to solicit public comments concerning whether the list of materials for which security plans are currently required should be modified. Commenters were asked to address a number of issues related to the identification of materials that pose a security threat sufficient to justify preparation and implementation of a security plan. Thirty-four comments were received from industry associations, shippers, carriers, and private citizens. In addition, six people made presentations at the public meeting.

Interested persons are invited to submit comments on the potential environmental, safety, and other impacts of the proposals in this NPRM.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is proposing to amend title 49 chapter I, subchapter C, as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

2. In § 172.704, paragraphs (a)(5), and (c)(2) are revised to read as follows:

§ 172.704 Training requirements.

(a)* * *

(5) *In-depth security training.* Each hazmat employee of a person required to have a security plan in accordance with subpart I of this part who handles hazardous materials covered by the plan, performs a regulated function related to the hazardous materials covered by the plan, or is responsible for implementing the plan must be trained concerning the security plan and its implementation. Security training must include company security objectives, organizational security structure, specific security procedures, specific security duties and responsibilities for each employee, and specific actions to be taken by each employee in the event of a security breach.

* * * * *

(c)* * *

(2) *Recurrent training.* A hazmat employee must receive the training required by this subpart at least once every three years. For in-depth security training required under paragraph (a)(5) of this section, a hazmat employee must be trained at least once every three years or, if the security plan for which training is required is revised during the three-year recurrent training cycle, within 90 days of implementation of the revised plan.

* * * * *

3. In § 172.800, paragraph (b) is revised to read as follows:

§ 172.800 Purpose and applicability.

* * * * *

(b) *Applicability.* Each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a transportation security plan for hazardous materials that conforms to the requirements of this subpart:

(1) Any quantity of a Division 1.1, 1.2, or 1.3 material;

(2) Any quantity of a Division 1.4 material, identified in the Hazardous Materials Table in § 172.101 of this part with UN identification numbers UN 0104, UN 0237, UN 0255, UN 0267, UN 0289, UN 0361, UN 0365, UN 0366, UN 0440, UN 0441, UN 0455, UN 0456, and UN 0500;

(3) Any quantity of a Division 1.5 material;

(4) 3,000 L (793 gallons) or more in a single packaging of a Division 2.1 material;

(5) 3,000 L (793 gallons) or more in a single packaging of a Division 2.2 material with a subsidiary hazard of 5.1;

(6) Any quantity of a material poisonous by inhalation, as defined in § 171.8 of this subchapter;

(7) 3,000 L (793 gallons) or more in a single packaging of a Class 3 material;

(8) Any quantity of a desensitized explosive meeting the definition of a Class 3 or Division 4.1 material;

(9) 3,000 kg (6,614 lbs.) or more in a single packaging of a Division 4.2 material meeting the criteria for Packing Group I or II;

(10) Any quantity of a Division 4.3 material;

(11) 3,000 L (793 gallons) or more in a single packaging of a Division 5.1 liquid meeting the criteria for Packing Group I or II;

(12) 3,000 L (793 gallons) of Division 5.1 perchlorates, ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions or suspensions or gels;

(13) Any quantity of an organic peroxide, Type B, liquid or solid, temperature controlled;

(14) Any quantity of a Division 6.1 material meeting the criteria for Packing Group I;

(15) 3,000 L (793 gallons) or more in a single packaging of a Division 6.1

material meeting the criteria for Packing Group II or III;

(16) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73 or the United States Department of Agriculture under 9 CFR part 121;

(17) 3000 A_2 in a single package of Class 7 material or the following radionuclides at the thresholds indicated:

Radionuclide	Transport security threshold (TBq)
Am-241	0.6
Au-198	2
Cd-109	200
Cf-252	0.2
Cm-244	0.5
Co-57	7
Co-60	0.3
Cs-137	1
Fe-55	8000
Ge-68	7
Gd-153	10
Ir-192	0.8
Ni-63	600
Pd-103	900
Pm-147	400
Po-210	0.6
Pu-238	0.6
Pu-239	0.6
Ra-226	0.4
Ru-106	3
Se-75	2
Sr-90	10
Tl-204	200
Tm-170	200
Yb-169	3

For mixtures of radionuclides, determination of whether or not the transport security radioactivity threshold has been met or exceeded can be calculated by summing the ratios of activity present for each radionuclide divided by the transport security threshold for that radionuclide. If the sum of the fractions is less than 1, then the radioactivity threshold for the mixture has not been met or exceeded. This calculation can be made with the formula:

$$\sum_i \left(A_i/T_i\right) < 1$$

Where:

A_i = activity of radionuclide i that is present in a package (TBq)

T_i = transport security threshold for radionuclide i (TBq)

(18) 3,000 L (793 gallons) or more in a single packaging of a Class 8 material meeting the criteria for Packing Group I.

* * * * *

4.1. In § 172.802, revise paragraph (a) introductory text, redesignate paragraph (b) as paragraph (c) and revise it, and add new paragraphs (b) and (d), to read as follows:

§ 172.802 Components of a security plan.

(a) The security plan must include an assessment of transportation security risks for shipments of the hazardous materials listed in § 172.800, including site-specific or location-specific security risks, and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

* * * * *

(b) The security plan must also include the following:

(1) Identification by job title of the senior management official responsible for overall development and implementation of the security plan;

(2) Security duties for each position or department that is responsible for implementing the plan or a portion of the plan and the process of notifying employees when specific elements of the security plan must be implemented; and

(3) A plan for training hazmat employees in accordance with § 172.704 (a)(4) and (a)(5) of this part.

(c) The security plan, including the transportation security risk assessment developed in accordance with paragraph (a) of this section, must be in writing and must be retained for as long as it remains in effect. The security plan must be reviewed at least annually and revised and/or updated as necessary to reflect changing circumstances. The most recent version of the security plan, or portions thereof, must be available to the employees who are responsible for implementing it, consistent with personnel security clearance or background investigation restrictions and a demonstrated need to know. When the security plan is updated or revised, all employees responsible for implementing it must be notified and all copies of the plan must be maintained as of the date of the most recent revision.

(d) Each person required to develop and implement a security plan in accordance with this subpart must maintain a copy of the security plan (or an electronic image thereof) that is accessible at, or through, its principal place of business and must make the security plan available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or the Department of Homeland Security.

Issued in Washington, DC on September 3, 2008, under authority delegated in 49 CFR part 106.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E8–20856 Filed 9–8–08; 8:45 am]

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